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8	IN THE SUPERIOR COURT				
9	FOR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS				
10 11	COMMONWEALTH OF THE NORTHERN, MARIANA ISLANDS,)	minal Case No. 98		
1 2	Plaintiff,) DE	RDER DENYING EFENDANT'S MO OR DISQUALIFIO	OTION	
13	vs.	}) FOR DISQUALIFICATI		
14	ALFREDO E. REYES,	}			
15	Defendant.	Ś			
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17	I. PROCEDURAL BACKGROUND				
18	This matter came before the Court on July 14, 1999, at 10:00 a.m. in Courtroom 223 on				
19	Defendant's Motion for Disqualification of Associate Judge John A. Manglona. Chief Prosecutor				
20	Kevin A. Lynch, Esq. appeared on behalf of the Commonwealth. Assistant Public Defender Daniel C.				
21	Bowen, Esq. appeared on behalf of the Defendant, Alfredo E. Reyes. The Court, having heard and				
22	considered the arguments of counsel and being fully informed of the premises, now renders its				
23	decision.				
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26	EOD DUDI ICATION				
27	FOR PUBLICATION				
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II. FACTS

On September 8, 1998, Defendant was charged with four counts of Assault and Battery, in violation of 6 CMC § 1202(a) and one count of Disturbing the Peace, in violation of 6 CMC § 3 101(a).

On September 18, 1998, a preliminary hearing was held before Associate Judge John A. Manglona (hereinafter referred to as Judge Manglona). Assistant Public Defender Daniel C. Bowen, Esq. appeared on behalf of Defendant. Chief Prosecutor Kevin A. Lynch, Esq. appeared on behalf of the Commonwealth.

Between November 25, 1998, and April 15, 1999, Judge Manglona presided over one additional hearing in this matter and entered three orders regarding collateral issues involving Defendant.

On June 1, 1999, Defendant filed a Motion for Disqualification asking that Judge Manglona be disqualified pursuant to 1 CMC § 3308(a) on the grounds that he is married to Assistant Attorney General Ramona V. Manglona, Esq., and that his partiality might reasonably be questioned as she is employed by the Commonwealth under the supervision of the lead counsel in the present matter, Chief Prosecutor Kevin A. Lynch, Esq.

Assistant Attorney General Ramona V. Manglona, Esq., the spouse of Judge Manglona, did not appear on behalf of the Commonwealth in this matter and no facts are alleged by Defendant that she has had any direct involvement in the matter.

III. ISSUE

1. Whether Defendant's Motion for Disqualification should be granted pursuant to 1 CMC § 3308(a) on the grounds that Associate Judge John A. Manglona's partiality might reasonably be questioned due to the fact that Judge Manglona's spouse, Assistant Attorney General Ramona V. Manglona, is an attorney working in the same office as Chief Prosecutor Kevin A. Lynch, lead counsel for the Commonwealth in the present matter.

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IV. ANALYSIS

On June 1, 1999, Defendant filed a Motion for Disqualification of Associate Judge John A.

Manglona. Defendant argues that Judge Manglona should be disqualified pursuant to 1 CMC § 3308(a) on the grounds that his ability to sit as an impartial trier of fact is called into question because Judge Manglona's spouse, Assistant Attorney General Ramona V. Manglona, is an attorney working in the same office as Chief Prosecutor Kevin A. Lynch, lead counsel in the present matter.

The Superior Court has previously addressed the issue of whether a sitting judge, who is married to a criminal prosecutor employed by the government, should be disqualified from all criminal proceedings where the case is being handled by a prosecutor other than the judge's spouse. The Court held, in that instance, that "the fact that Judge Manglona's wife is a criminal prosecutor, without more, does not reasonably bring into question the judge's partiality." Commonwealth v. Basa, Criminal Case No. 98-432D (N.M.I. Super. Ct. Apr. 23, 1999) (Order Denying Defendant's Motion for Disqualification of Associate Judge John A. Manglona, at 6). As such, the Court denied a Motion for Disqualification made pursuant to 1 CMC § 3308(a). Id. The Court reiterated its holding in a second criminal matter involving the same issue and in which the Defendant filed a Motion for Disqualification based on facts similar to those of the Basa decision. See, Commonwealth v. Caja, Criminal Case No. 99-040D (N.M.I. Super. Ct. Apr. 23, 1999) (Order Denying Defendant's Motion for Disqualification of Associate Judge John A. Manglona).

The Superior Court did, however, grant a motion for disqualification where Judge Manglona was assigned to preside over a criminal matter in which Ramona V. Manglona made an appearance for a defendant's arraignment before Presiding Judge Edward Manibusan. Commonwealth v. Dowai, Criminal Case No. 99-072D (N.M.I. Super. Ct. Apr. 19, 1999) (Order Granting Defendant's Motion for Disqualification of Associate Judge John A. Manglona, at 3). The holding in that matter, however, is distinguishable in that Judge Manglona was disqualified pursuant to 1 CMC § 3308(b), which states that "[a] justice or judge shall also disqualify himself or herself. . .[where] . . . his or her spouse . . . is acting as a lawyer in the proceeding [or] is known by the judge or justice to have an interest that could be substantially affected by the outcome of the proceeding." 1 CMC § 3308(b).

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Kevin A. Lynch, lead counsel for the Commonwealth.

1 CMC § 3308(a) states 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."

1 CMC \$3308(a). Interpretations of federal law regarding the disqualification of a judge are relevant

§ 455(a), "[a] justice, judge or magistrate . . . shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

in that the standard employed is identical to that of 1 CMC § 3308(a). Pursuant to 28 U.S.C.

Defendant contends that the issue presented in this matter differs from that of the Caia_and

Basa decisions in that those cases involved prosecutors other than Chief Prosecutor Kevin A. Lynch.

In the present matter, Defendant contends that Judge Manglona should be disqualified pursuant to

1 CMC § 3308(a) based on the fact that Judge Manglona's spouse, Assistant Attorney General

Ramona V. Manglona, is a criminal prosecutor who works in the same office as Chief Prosecutor

The appropriate standard to be applied when determining whether a judge should be disqualified under either 1 CMC § 3308(a) or 28 U.S.C. \$455(a) is an objective one. "A judge is required to recuse himself. . . if an objectively reasonable person informed of the facts would conclude that the judge's impartiality might reasonably be questioned were the judge to continue to hear the case." Denardo v. Municinality of Anchorage, 974 F.2d 1200, 1201 (9th Cir. 1992), cert. denied, 507 U.S. 945, 113 S.Ct. 1351, 122 L.Ed.2d 732 (1993); See also, Perkins v. Spivey, 911 F.2d 22, 33 (8" Cir. 1990), cert. denied, 499 U.S. 920, 111 S.Ct. 1309, 113 L.Ed2d 243 (1991). In applying the above objective standard, actual impropriety need not be shown as "[t]he very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." Liliebern v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). Although an "appearance of impropriety" is sufficient to warrant disqualification, there are two important policy considerations at issue: "[o]n the one hand, courts must not only be, but must seem to be, free of bias or prejudice . . . [o]n the other hand, recusal on demand would put too large a club in the hands of litigants and lawyers, enabling them to veto the assignment of judges for no good reason." In re United States, 158 F.3d 26, 30 (1st Cir. 1998).

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"It is well settled that a judge is presumed to be qualified and that the **movant** bears a substantial burden of proving otherwise." State of Idaho v. Freeman, 478 F.Supp 33, 35 (D. Idaho 1979). Therefore, Defendant carries the burden of showing that an objectively reasonable person, informed of the fact that Judge Manglona's spouse is a criminal prosecutor, would conclude that Judge Manglona's impartiality in a criminal case might reasonably be questioned. Defendant provides two grounds for the assertion that a reasonable person would conclude that Judge Manglona's impartiality in a criminal case might reasonably be questioned.

First, Defendant relies on conclusory statements regarding the marriage relationship of Judge Manglona and his wife. Defendant states that "Judge Manglona and his wife are known to be engaged in an active marriage [and] because of the intimate nature of the marriage relationship, it can be presumed that they share confidences regarding their personal and **professional** lives." Reply to Prosecutions Answer on Defense Motion for Disqualification of Judge, at 4 (Filed July 14, 1999) (emphasis in original). One cannot conclude that an objectively reasonable person would presume that a married couple would share confidences regarding their personal and professional lives, especially where the profession chosen by each spouse is governed by ethical standards regarding such communication. Ramona V. Manglona, as an attorney admitted to practice in the Commonwealth and as an officer of the court, is bound by the Model Rules of Professional Conduct. Judge Manglona, similarly, is bound by the Commonwealth Code of Judicial Conduct. There is no indication that the fact of their marriage or of their respective professional duties has in any way altered their adherence to the applicable standards of professional responsibility.

Second, Defendant relies on the decision in Smith v. Beckman, 683 P.2d 1214 (Colo. Ct. App. 1984) for the proposition that a judge must disqualify himself or herself from a criminal matter where his or her spouse is employed as an attorney in the same office as that of the prosecutor. In that case, the Colorado Court of Appeals held that an appearance of impropriety is created by the close nature of the marriage relationship. The Beckman decision held that "[t]he existence of a marriage relationship between a judge and a deputy district attorney is sufficient to establish grounds for disqualification, even though no other facts call into question the judge's impartiality." Beckman,

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Sthissa htolding, however, is based upon an interpretation of Canon 3(C)(1) of the Code of Judicial Conduct. In the present matter, the Court is concerned with the interpretation of 1 CMC § 3308(a) and its federal counterpart, 28 U.S.C. \$455(a). Although the Code of Judicial Conduct and the statutory provisions contain similar language, the Colorado Court of Appeals did not apply the objective standard as set forth in Denardo v. Municipality of Anchorage, 974 F.2d 1200, 1201 (9th Cir. 1992), cert. denied, 507 U.S. 945, 113 S.Ct. 1351, 122 L.Ed.2d 732 (1993). As such, the Court finds that the Beckman decision is not persuasive in guiding the Court's interpretation of 1 CMC § 3308(a).

For the foregoing reasons, the Court finds that Defendant has failed to show that an objectively reasonable person, informed of the fact that Judge Manglona's spouse is a criminal prosecutor, would conclude that the judge's impartiality might reasonably be questioned were the judge to continue to hear the case. As such, Defendant's Motion for Disqualification is DENIED.

Furthermore, the Court notes that the question of whether Judge Manglona should be disqualified from hearing criminal matters has been addressed by the Superior Court on previous occasions. In the present matter, as in the **Basa** and **Caja** decisions, the Court has found that disqualification is not warranted. Therefore, any **further** motions for the disqualification of Judge Manglona on the same grounds should be based on specific facts rather than conclusory statements and allegations.

V. CONCLUSION

For the foregoing reasons, the Court finds that Defendant has failed to show that an objectively reasonable person, informed of the fact that Judge Manglona's spouse is a criminal prosecutor, would conclude that the judge's impartiality might reasonably be questioned were the judge to continue to hear the case. As such, Defendant's Motion for Disqualification is DENIED.

So ORDERED this _____day of July, 1999.

UAN T. LIZAMA Associate Judge