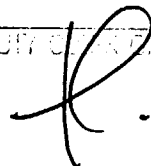


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IN THE SUPERIOR COURT
FOR THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN,
MARIANA ISLANDS,

Plaintiff,

vs.

ALFREDO E. REYES,

Defendant.

Criminal Case No. 98-345

**ORDER DENYING
DEFENDANT'S MOTION
FOR DISQUALIFICATION**

I. PROCEDURAL BACKGROUND

This matter came before the Court on July 14, 1999, at 10:00 a.m. in Courtroom 223 on Defendant's Motion for Disqualification of Associate Judge John A. Manglona. Chief Prosecutor Kevin A. Lynch, Esq. appeared on behalf of the Commonwealth. Assistant Public Defender Daniel C. Bowen, Esq. appeared on behalf of the Defendant, Alfredo E. Reyes. The Court, having heard and considered the arguments of counsel and being fully informed of the premises, now renders its decision.

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.

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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).

1 Defendant contends that the issue presented in this matter differs from that of the Caia and
2 Basa decisions in that those cases involved prosecutors other than Chief Prosecutor Kevin A. Lynch.
3 In the present matter, Defendant contends that Judge Manglona should be disqualified pursuant to
4 1 CMC § 3308(a) based on the fact that Judge Manglona's spouse, Assistant Attorney General
5 Ramona V. Manglona, is a criminal prosecutor who works in the same office as Chief Prosecutor
6 Kevin A. Lynch, lead counsel for the Commonwealth.

7 1 CMC § 3308(a) states that "[a] justice or judge of the Commonwealth shall disqualify
8 himself or herself in any proceeding in which his or her impartiality might reasonably be questioned."
9 1 CMC §3308(a). Interpretations of federal law regarding the disqualification of a judge are relevant
10 in that the standard employed is identical to that of 1 CMC § 3308(a). Pursuant to 28 U.S.C.
11 § 455(a), "[a] justice, judge or magistrate . . . shall disqualify himself in any proceeding in which his
12 impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

13 The appropriate standard to be applied when determining whether a judge should be
14 disqualified under either 1 CMC § 3308(a) or 28 U.S.C. §455(a) is an objective one. "A judge is
15 required to **recuse** himself. . . if an objectively reasonable person informed of the facts would
16 conclude that the judge's impartiality might reasonably be questioned were the judge to continue to
17 hear the case." Denardo v. Municipality of Anchorage, 974 F.2d 1200, 1201 (9th Cir. 1992), cert.
18 denied, 507 U.S. 945, 113 S.Ct. 1351, 122 L.Ed.2d 732 (1993); See also, Perkins v. Spivey, 911
19 F.2d 22, 33 (8th Cir. 1990) , cert. denied, 499 U.S. 920, 111 S.Ct. 1309, 113 L.Ed2d 243 (1991). In
20 applying the above objective standard, actual impropriety need not be shown as "[t]he very purpose
21 of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety
22 whenever possible." Liliebert v. Health Services Acquisition Corp., 486 U.S. 847, 108 S.Ct. 2194,
23 100 L.Ed.2d 855 (1988). Although an "appearance of impropriety" is sufficient to warrant
24 disqualification, there are two important policy considerations at issue: "[o]n the one hand, courts
25 must not only be, but must seem to be, free of bias or prejudice . . . [o]n the other hand, **recusal** on
26 demand would put too large a club in the hands of litigants and lawyers, enabling them to veto the
27 assignment of **judges** for no good reason." In re United States, 158 F.3d 26, 30 (1st Cir. 1998).

1 ~~This holding~~, however, is based upon an interpretation of Canon 3(C)(1) of the Code
2 of Judicial Conduct. In the present matter, the Court is concerned with the interpretation of 1 CMC
3 § 3308(a) and its federal counterpart, 28 U.S.C. §455(a). Although the Code of Judicial Conduct
4 and the statutory provisions contain similar language, the Colorado Court of Appeals did not apply
5 the objective standard as set forth in Denardo v. Municipality of Anchorage, 974 F.2d 1200, 1201 (9th
6 Cir. 1992), cert. denied, 507 U.S. 945, 113 S.Ct. 1351, 122 L.Ed.2d 732 (1993). As such, the Court
7 finds that the Beckman decision is not persuasive in guiding the Court's interpretation of 1 CMC
8 § 3308(a).

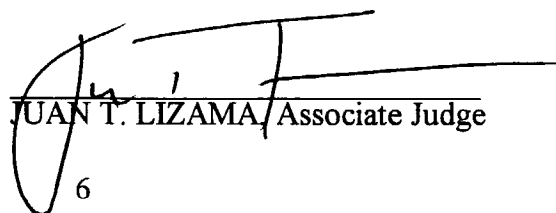
9 For the foregoing reasons, the Court finds that Defendant has failed to show that an
10 objectively reasonable person, informed of the fact that Judge Manglona's spouse is a criminal
11 prosecutor, would conclude that the judge's impartiality might reasonably be questioned were the
12 judge to continue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

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

19 V. CONCLUSION

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

24 So ORDERED this ____ day of July, 1999.

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27 JUAN T. LIZAMA, Associate Judge
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