

2023 SEP 27 PM 3: 01

CLERK OF COURT

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

Plaintiff,

Criminal Case No. CF0447-23

vs.

ALEJO C. SABLAN *et al*,

Defendants.

DECISION AND ORDER
(Defendant's Motion for Reconsideration)

INTRODUCTION

This matter is before the Honorable Alberto E. Tolentino ("Judge Tolentino") for the limited purpose of addressing Alejo C. Sablan's ("Defendant") Motion for Reconsideration. Defendant seeks to disqualify the Honorable Alberto C. Lamorena, III ("Presiding Judge Lamorena") from presiding over the underlying case. Attorney Joaquin C. Arriola, Jr. represents the Defendant. Pursuant to local rule CVR 7.1(e)(1), it has been decided that oral argument is unnecessary, and the Court hereby **DENIES** Defendant's Motion for Reconsideration.

BACKGROUND

The factual background of this matter was previously set out by the Court its a Decision and Order issued on September 11, 2023. However, the facts necessary to dispose of the instant Motion for Reconsideration are as follows:

On July 3, 2023, the Grand Jury indicted Defendant on the following charges: (1) Theft By Complicity (As a Second Degree Felony); (2) Conspiracy For Misapplication Of Entrusted

1 Funds (As a Third Degree Felony); (3) Misapplication Of Entrusted Funds (As a
2 Misdemeanor); and (4) Official Misconduct (As a Misdemeanor) Indictment, July 3, 2023.
3 Each charge contained the special allegation of 'Crime Against the Community'. *Id.* The case
4 was assigned to Presiding Judge Lamorena. Notice of Judge Ass., July 28, 2023. On Aug. 22,
5 2023 Defendant filed a Statement of Objection. On Aug. 25, 2023, Presiding Judge Lamorena
6 filed an Answer to Statement of Objection. On Sept. 1, 2023, the People filed a Memorandum
7 of Points and Authorities in Response to 'Statement of Objection 7 GCA § 6107'. On Sept. 8,
8 2023, Judge Tolentino filed a Decision and Order Denying Defendant's Statement of Objection
9 seeking Disqualification of Presiding Judge Lamorena. Decision and Order, Sept. 8, 2023. On
10 September 18, 2023, Defendant filed a Motion to Reconsider the Decision and Order Denying
11 Disqualification of Presiding Judge Lamorena. Motion for Reconsideration, September 18,
12 2023.
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16 DISCUSSION

17 In the Motion for Reconsideration, the Defendant argues: 1) Judge Tolentino previously
18 recused himself in this case and the grounds for recusal have not changed; 2) the Government
19 filed an opposition which is not allowed by Guam Law and to which director San Augustin
20 was not afforded the opportunity to reply; 3) there were new material facts disclosed in Judge
21 Lamorena's answer which Director San Agustin did not know before seeing the Answer and
22 did not have the opportunity to address; and 4) Judge Tolentino failed to consider material facts
23 and to apply the appropriate legal standard, which Defendant believes if cured would have
24 caused the Court to reach a different conclusion.
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27 **I. Judge Tolentino had previously recused himself and the grounds for recusal have not changed.**

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2 Defendant alleges that the undersigned had disqualified himself from the matter on July
3 31, 2023; and that he erred by entering a Decision and Order on the question of Presiding
4 Judge Lamorena's disqualification. Motion for Reconsideration, September 18, 2023

5 However, Judge Tolentino did not recuse himself in this case. Therefore, the argument
6 Defendant alleges does not apply and the Court expressly ignores this contention.
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9 **II. Did the Government file an opposition which was not allowed by Guam Law and to
10 which Defendant was not afforded the opportunity to reply?**

11 Defendant argues that Opposition statements are not authorized as a Statement of
12 Objection is a statutory procedure. 7 G.C.A § 6107 (2023). As such, the People's
13 Memorandum of Points and Authorities in Response to Statement of Objection is not
14 allowed by Guam Law, and the People should be admonished not to file papers not
15 authorized by statutory procedure. Motion for Reconsideration, September 18, 2023.
16 However, the Court finds no prohibition in the statute against an opposing party filing a
17 response to a Statement of Objection, nor has Defendant offered any other authority to
18 support his contention that the adverse party is forbidden to advocate its position on the
19 issue.
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21 Therefore, the Court rejects this argument.
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23 **III. Were there new material facts disclosed in Judge Lamorena's answer which
24 Defendant did not know before seeing the Answer and did not have the opportunity
25 to address?**
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1 Under the Criminal Procedure Rules of the Local Rules of the Superior Court of
2 Guam, a party in a criminal matter may seek reconsideration of a previously determined
3 issue only based on:

- 4 (1) a material difference in fact or law from that presented to the
5 court before such decision that in the exercise of reasonable
6 diligence could not have been known to the party moving for
7 reconsideration at the time of such a decision, or,
8 (2) the emergence of new material facts or a change of law
9 occurring after the time of such decision, or,
10 (3) a manifest showing of failure to consider material facts
11 presented to the Court before such decision.”

12 CR 1.1(d) (2007)

13 Thus, the Court is confronted with the preliminary issue of whether Defendant has demonstrated
14 one or more grounds for reconsideration.

15 **A. Was there a material difference in fact or law from that presented to the**
16 **court before such decision that in the exercise of reasonable diligence**
17 **could not have been known to the party moving for reconsideration at the**
18 **time of such a decision?**

19 Defendant argues that they were not aware of Presiding Judge Lamorena’s Answer prior
20 to the Court filing the Decision and Order. Motion for Reconsideration, September 18, 2023.
21 Defendant argues that new material facts emerged based on the Answer, including 1) Presiding
22 Judge Lamorena was unaware that then-candidate Attorney General Douglas Moylan was
23 promoting their relationship on Facebook, and that 2) Presiding Judge Lamorena’s official title
24 was used on the Facebook page, a page that Defendant argues was utilized as campaign
25 literature and remains so to this day. *Id.* at 7. Defendant argues that such new material facts are
26 relevant because Defendant’s Statement of Objection would have focused on the appearance of
27 impartiality, particularly when a judge should be disqualified despite not being the one actually
engaging in conduct creating the appearance of impropriety. *Id.*

The facts presented by Defendant in the Motion for Reconsideration are not new, as
Defendant was aware of Presiding Judge Lamorena’s Answer, having been filed on August 25,

1 2023, and could have provided a response at any time prior to the Court's filing of the Decision
2 and Order. Nor is Presiding Judge Lamorena's lack of awareness a relevant material fact;
3 rather, such lack of awareness and participation in the alleged conduct would make a reasonable
4 person *less* likely to see the conduct as having the appearance of impropriety. Therefore, to the
5 extent that Presiding Judge Lamorena's Answer is framed as an argument of new, material facts
6 unknown to the party moving for disqualification, the Court expressly rejects this argument.
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8 **B. Was there the emergence of new material facts or a change of law occurring
after the time of such decision?**

9 Defendant has also failed to show any new or changed mandatory or persuasive
10 authority that was not considered by the Court. The authorities cited in the Motion for
11 Reconsideration include the same authorities cited in the Decision and Order. Therefore, to the
12 extent Defendant's argument is framed as an argument of new or changed law, the Court
13 expressly rejects this argument.
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15 **C. Was there a manifest showing of failure to consider material facts presented to
the Court before such decision?**

16 Citing *Dizon* in the Motion for Reconsideration, Defendant argues that the Decision and
17 Order focuses on actual bias and not the appearance of partiality related to the facts presented.
18 Motion for Reconsideration, Sept. 18, 2023. Defendant does concede that the Court referenced
19 the appearance of impartiality standard articulated in *Dizon*, but argues that the Court
20 improperly focused on actual bias from Presiding Judge Lamorena to AG Moylan. *Id.* at 10.
21 This is not so, as the Court's analysis of the facts was based on the appearance of impropriety
22 using the standard set down in *Van Doo*:
23

24 The appearance of bias is judged from the standard of 1) a
25 reasonable person who 2) knows all the facts, and 3) understands
26 the context of the jurisdictions, parties, and controversies involved,
27 including 4) such 'realities of the Guam judicial system' as the
relatively small number of lawyers in the Guam bar and "the nature
of Guam families"

1 *Van Dox v. Superior Court of Guam*, 2008 Guam 7 ¶ 32.

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3 The Court applied the appropriate standard based on consideration of the same material facts
4 that were presented in the Decision and Order, and are once again being presented in the Motion
5 for Reconsideration, including 1) the professional reference showing Presiding Judge
6 Lamorena's name and current title; 2) the posting of the reference on AG Moylan's Facebook
7 page during the 2022 campaign for Attorney General; 3) the continued usage of the professional
8 reference after the end of the campaign; and 4) Presiding Judge Lamorena's ignorance regarding
9 AG Moylan's actions. The analysis shows that a reasonable person would, after looking at the
10 facts and understanding both the circumstances involved as well as the unique realities of the
11 Guam judicial system, as little more than an indication that Presiding Judge Lamorena, having
12 1) supervised AG Moylan as a law clerk thirty years prior and 2) having practiced in the same
13 legal community for several decades, can ultimately speak to AG Moylan's abilities as a legal
14 practitioner. A reasonable person would not find the inclusion of a professional reference under
15 such circumstance as giving the appearance of Presiding Judge Lamorena endorsing AG
16 Moylan's political platform. Therefore, the Court finds there were no material facts alleged that
17 the Court failed to consider.
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19 The Court finds that Defendant has not demonstrated any of the three grounds for
20 reconsideration. Defendant seeks an oral hearing to develop the record, but does not offer any
21 specific new or previously unknown material fact which contradicts the findings in the Court's
22 earlier Decision and Order. Defendant had the opportunity to form a response to Presiding
23 Judge Lamorena's Answer prior to the Court submitting a Decision and Order; however,
24 Defendant did not do so. Every new fact Defendant argued might exist would have existed at
25 the time Presiding Judge Lamorena's Answer was filed on August 25, 2023. Thus, the Court
26 finds that Defendant's Motion for Reconsideration must fail and the Motion is **DENIED**.
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CONCLUSION

By preponderance of the evidence and based on the foregoing reasons, the Court hereby
DENIES the Defendant's Motion for Reconsideration.

SO ORDERED, this _____ day of SEP 27 2023 2023.



HONORABLE ALBERTO E. TOLENTINO
Judge, Superior Court of Guam

