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SUPERIOR COURT  
OF GUAM  
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IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

v.

GERMICKSON FRITZ,  
DOB: 03/16/2001

Defendant.

Criminal Case No. CM0224-24  
GPD Report No. 24-17417

**DECISION AND ORDER  
DENYING THE OAG'S  
STATEMENT OF OBJECTION  
7 G.C.A. § 6107 & MOTION TO  
DISQUALIFY**

INTRODUCTION

This matter is before the Honorable Alberto C. Lamorena, III upon the Office of the Attorney General's (the "OAG's") Statement of Objection 7 G.C.A. § 6107 & Motion to Disqualify (the "Objection"). The OAG objects to the Honorable Alberto E. Tolentino's ("Judge Tolentino's") competency to preside over the above-captioned matter under 7 G.C.A. § 6107.

Having considered the Objection, Judge Tolentino's Answer, the OAG's Response, as well as the applicable statutes and case law and all relevant portions of the record, this Court now issues the following Decision and Order **DENYING** the OAG's request to disqualify Judge Tolentino and reassign this case.

BACKGROUND

Defendant is charged with Driving While Impaired (as a Misdemeanor) and Opened Container of Alcohol (as a Misdemeanor) following a traffic accident. See Magistrate's Complaint (Jul. 29, 2024).

Judge Tolentino was subsequently assigned to preside over this criminal case. See Notice of Judge Assignment (Aug. 1, 2024).

1 On August 2, 2024, the OAG filed their Statement of Objection 7 G.C.A. § 6107 & Motion to  
2 Disqualify. The OAG seeks Judge Tolentino’s disqualification on the following grounds:

- 3 • Judge Tolentino’s established history of disqualifying himself from matters in which  
4 Doug Moylan appeared as private counsel, prevents Judge Tolento from handling  
5 matters involving the OAG now that Doug Moylan currently serves as the elected  
6 Attorney General of Guam.
- 7 • Judge Tolentino’s personal relationship with Attorney General Moylan necessitates his  
8 disqualification in matters involving the OAG. Judge Tolentino is married to Attorney  
9 General Moylan’s ex-wife. and Attorney General Moylan is the father of Judge  
10 Tolentino’s step-children.

11 See Objection at 2 (Aug. 2, 2024).

12 On August 5, 2024, Judge Tolentino filed his Answer to Objection (“Answer”). In his  
13 response, Judge Tolentino challenges the timeliness of the OAG’s Objection. See Answer at ¶ 11  
14 (Aug. 2, 2024). Judge Tolentino also made the following responses, under penalty of perjury, which  
15 the Court finds particularly relevant in its recusal determination:

- 16 • ¶ 6. That at Mr. Moylan’s request, a meeting between him and the undersigned, the  
17 undersigned’s chamber staff, the Administrator of the Courts, and Mr. Moylan’s  
18 transition chairperson, Mr. Wilfred Aflage, occurred in December 2022.
- 19 • ¶ 7. That at this meeting, Mr. Moylan assured me and the other members in attendance  
20 that he perceived no conflict in his election as the Attorney General and the prosecution  
21 of criminal cases before the undersigned. It was agreed that the circumstances  
22 underlying my recusal in matters that Mr. Moylan was a lawyer no longer existed, to  
23 wit: that during my term as the Magistrate Judge and as a Judge I had routinely recused  
24 myself from all matters where Mr. Moylan was the attorney of a party before me on  
25 the basis that he was the father of my minor step-children and that the minor step-  
26 children were members of and resided in the household maintained by me and my wife  
27 and that as of even date, both step-children have now reached majority and adulthood  
28 and have been residing at their own residences in Guam and in the U.S. Mainland.
- ¶ 8. That Mr. Moylan never made an appearance as a lawyer in this case.
- ¶ 14. That my wife Doris L.G. Tolentino and Attorney General Moylan were divorced  
on June 13, 1997, and that there were two minor children at the time of the dissolution  
of marriage, to wit: Brandon (born 1990) and Angela (born 1992).

- 1 • ¶ 17. I have never observed Mr. Moylan and my wife involved in any sense in co-  
2 parenting the children of their marriage as the children have been raised and provided  
3 with protection and care to ensure their healthy development into adulthood, primarily  
4 by my wife and me, and that at present they are in fact adults able to conduct and make  
5 their own decisions in life.
- 6 • ¶ 18. That based upon the foregoing averments, the fact that Attorney General Moylan  
7 is the biological father of the undersigned’s stepchildren provides no basis for  
8 disqualification under 7 G.C.A. § 6105(b) or that the undersigned’s “impartiality might  
9 reasonably be questioned” as required under subsection (a).
- 10 • ¶ 19. That “[u]nder subsection 6105(a), what matters is not “actual bias”, but “the  
11 appearance of bias.” *Van Doox* at ¶ 32 (citing *Dizon v. Super. Ct. (People)*, 1998 Guam  
12 3 ¶ 10 n.3). The appearance of bias is judged from the standard of a “reasonable  
13 person” who knows all the facts, and understands the “contents of the jurisdictions,  
14 parties, and controversies involved,” including such “realities of the Guam judicial  
15 system” as the relatively small number of lawyers in the Guam bar and “the nature of  
16 Guam families.” *Id.* (citation omitted).
- 17 • ¶ 30. My wife and Mr. Moylan have been divorced for close to twenty-seven years  
18 and that the children of their marriage are adults living on their own and well over the  
19 age of majority and that no reasonable person who knows all the facts and understands  
20 the contents of the jurisdiction, parties and controversies involved in the Guam judicial  
21 system would conclude that there exists an appearance of bias requiring my  
22 disqualification in this matter.

23 Id.

24 On August 14, 2024, the OAG filed their Response to Judge Tolentino’s Answer  
25 (“Response”). The OAG asserts their Objection was timely filed, being filed just one (1) day after  
26 Judge Tolentino’s initial assignment. See Response at 1-3 (Aug. 14, 2024). The OAG also  
27 expands on their argument that Judge Tolentino is biased per se, arguing that Judge Tolentino’s  
28 personal relationship with Attorney General Moylan has not substantially changed and continues to  
provide a basis for his disqualification. Id. at 3-6.

On August 1, 2024, this Court was assigned to address the Objection. See Notice of  
Assignment of Recusal Judge (Aug. 1, 2024).

## DISCUSSION

### **I. The Law Governing Judicial Disqualification:**

1 Judicial disqualifications are governed by the substantive rules of 7 G.C.A. § 6105 and the  
2 procedural rules of 7 G.C.A. §§ 6106 and 6107. Section 6105 defines the grounds for disqualifications  
3 as follows:

4 (a) Any Judge shall disqualify himself or herself in any proceeding in which his or her  
5 impartiality might reasonably be questioned, but if, following complete disclosure to  
6 all parties in the proceeding of the reasons for disqualification, all parties agree to  
7 having the Judge continue to sit in the proceedings, he or she need not disqualify  
8 himself or herself.

9 (b) A Judge shall also disqualify himself or herself in the following circumstances, but  
10 if, following complete disclosure to all parties in the proceeding of the reasons for his  
11 or her disqualification, all parties agree to having the Judge continue to sit in the  
12 proceedings, he or she need not disqualify himself or herself:

13 (1) Where he or she has a personal bias or prejudice concerning a party, or  
14 personal knowledge of disputed evidentiary facts concerning the proceeding;

15 (2) Where in private practice he or she served as a lawyer in the matter in  
16 controversy, or a lawyer with whom he or she previously practiced law served  
17 during such association as a lawyer or either has been a material witness  
18 concerning the matter;

19 (3) Where he or she has served in governmental employment and in such  
20 capacity participated as counsel, advisor or material witness concerning the  
21 proceeding or, as such government employee, expressed an official opinion  
22 concerning the merits of the particular matter in controversy;

23 (4) Where he or she knows that he or she, individually or as a fiduciary, or his  
24 or her spouse or minor child residing in his or her household, has a financial  
25 interest in the subject matter in controversy or is a party to the subject matter  
26 in controversy or is a party to the proceeding, or in any other interest that could  
27 be substantially affected by the outcome of the proceeding;

28 (5) Where he or she or his or her spouse, or a person within the third degree of  
relationship to either of them, or the spouse of such person:

- (A) is a party to the proceeding, or an officer, director, or trustee of a party;
- (B) is acting as a lawyer in the proceeding;
- (C) is known by the Judge to have an interest that could be substantially affected by the outcome of the proceeding;
- (D) is to the Judge's knowledge likely to be a material witness in the proceeding.

See 7 G.C.A. § 6105.

1 Section 6106 compels a judge to disclose a disqualification listed under § 6105:

2 Whenever a Justice or Judge shall have knowledge of any fact or facts which, under  
3 the provisions of 6105 of this Chapter, disqualify him or her to sit or act as such in any  
4 action or proceeding pending before him or her, it shall be his or her duty to declare  
5 the same in open court and cause a memorandum thereof to be entered in the minutes.  
6 It shall be the duty of the clerk to transmit forthwith a copy of such memorandum to  
7 each party or his or her attorney who shall have appeared in such action or proceeding,  
8 except such parties as are presented in person or by attorney when the declaration is  
9 made.

10 See 7 G.C.A. § 6106.

11 If a judge fails to disclose a disqualifying factor under § 6105, then any party to the action who  
12 has appeared in the case may raise the objection to competency. In this regard, § 6107 provides as  
13 follows:

14 Whenever a Justice or Judge who shall be disqualified under the provisions of this  
15 Chapter to sit or act as such in any action or proceeding pending before him or her  
16 neglects or fails to declare his or her disqualification in the manner provided by this  
17 Chapter, any party to such action or proceeding who has appeared therein may present  
18 to the court and file with the clerk a written statement objecting to the hearing of such  
19 matter or any trial of any issue of fact or law in such action or proceeding before such  
20 Justice or Judge, and setting forth the fact or facts constituting the ground of the  
21 disqualification of such Justice or Judge. Copies of such written statement shall  
22 forthwith be served by the presenting party on each party, or his or her attorney, who  
23 has appeared in the action or proceeding and on the Justice or Judge alleged in such  
24 statement to be disqualified.

25 Within ten (10) days after the service of such statement as above provided, or ten (10)  
26 days after the filing of any statement, whichever is later in time, the Justice or Judge  
27 alleged therein to be disqualified may file with the clerk his or her consent in writing  
28 that the action or proceeding continue without him or her, or may file with the clerk  
his or her written answer admitting or denying any or all of the allegations contained  
in such statement and setting forth any additional fact or facts material or relevant to  
the question of his or her disqualification. The clerk shall forthwith transmit a copy of  
the Justice's or Judge's consent or answer to each party or his or her attorney who shall  
have appeared in such action or proceeding. Every such statement and every answer  
shall be verified in the manner prescribed for the verification of pleadings. The  
statement of a party objecting to the Justice or Judge on the ground of his or her  
disqualification shall be presented at the earliest practicable opportunity after his or her  
appearance and discovery of the facts constituting the ground of the Justice's or Judge's  
disqualification, and in any event before the commencement of the hearing of any issue  
of fact in the action or proceeding before such Justice or Judge.

1 No Justice or Judge who shall deny his or her qualification shall hear or pass upon the  
2 question of his or her own disqualification, but in every case the question of the  
3 Justice's or Judge's disqualification shall be heard and determined by some other Judge.  
4 The Presiding Judge, or next senior Judge, if it is the Presiding Judge's disqualification  
5 that is being requested, shall make such assignment within five (5) days after receiving  
6 from the clerk the notice that the statement of disqualification has been filed. In the  
7 case of a Justice's disqualification, the matter shall be heard by the Supreme Court  
8 constituted without the questioned Justice.

9 If such Judge admits his or her disqualification, or files his or her written consent that  
10 the action or proceeding be tried before another Judge, or fails to file the answer within  
11 the ten (10) days allowed, or if it shall be determined after the hearing that he or she is  
12 disqualified, the action or proceeding shall be heard and determined by another Judge  
13 of the Superior Court who is not disqualified. Such other Judge shall be assigned in the  
14 same manner as the Judge who was disqualified was assigned to hear the case initially.

15 See 7 G.C.A. § 6107.

16 **II. The Objection is procedurally sound, being timely filed at the earliest practicable  
17 opportunity and prior to any hearing before Judge Tolentino.**

18 The Court will first address the procedural issue of whether the OAG's Objection was timely  
19 filed. Judge Tolentino initially raised the issue of timeliness, stating "that neither Mr. Moylan nor the  
20 Office of the Attorney General had ever challenged or objected to me presiding over this case until  
21 the instant Statement of Objection and Motion to disqualify." See Answer at ¶ 9 (Aug. 5, 2024).

22 Where a judge neglects or fails to disclose his disqualification mandated under § 6105, § 6107  
23 provides that "any party to such action or proceeding who has appeared therein may present to the  
24 court and file with the clerk a written statement objecting to the hearing of such matter or any trial of  
25 any issue of fact or law in such action or proceeding before such Justice or Judge, and setting forth  
26 the fact or facts constituting the ground of the disqualification of such Justice or Judge. Copies of such  
27 written statement shall forthwith be served by the presenting party on each party, or his or her attorney,  
28 who has appeared in the action or proceeding and on the Justice or Judge alleged in such statement to  
be disqualified." See 7 G.C.A. § 6107.

1           Importantly, § 6107 mandates that “the statement of a party objecting to the Justice or Judge  
2 on the ground of his or her disqualification *shall be presented at the earliest practicable opportunity*  
3 *after his or her appearance and discovery of the facts constituting the ground of the Justice's or*  
4 *Judge's disqualification, and in any event before the commencement of the hearing of any issue of fact*  
5 *in the action or proceeding* before such Justice or Judge.” *Id.* (emphasis added). The Guam Supreme  
6 Court has confirmed that statements of objection shall “be presented at the earliest practicable  
7 opportunity after ... discovery of the facts constituting the ground for disqualification.” *See Van Dox*  
8 *v. Super Ct.*, 2008 Guam 7 ¶ 44.

9  
10           “A party’s failure to comply with any of these requirements constitutes sufficient grounds to  
11 strike or disregard the statement of objection.” *See People v. Johnny*, 2006 Guam 10 ¶ 11. Thus,  
12 “with respect to the statutory provision requiring that disqualification be urged at the ‘earliest practical  
13 opportunity,’ the intention is ‘clear that *failure to comply with the provision constitutes a waiver.*’”  
14 *See Van Dox v. Super Ct.*, 2008 Guam 7 ¶ 44 (quoting *Caminetti v. Pac. Mut. Ins. Co. of Cal.*, 139  
15 P.2d 930, 933 (Cal. 1943) (emphasis added)). The Guam Supreme Court applied this “silence-as-  
16 waiver rule” in *San Union, Inc. v. Arnold*, “to avoid the possibility of ‘lying in wake, raising the  
17 recusal issue only after learning the court’s ruling on the merits.’” *See San Union, Inc. v. Arnold*,  
18 2017 Guam 10 ¶ 27 (quoting *Phillips v. Amoco Oil Co.*, 799 F.2d 1464, 1472 (11<sup>th</sup> Cir. 1986)).

19  
20  
21           However, a finding of timeliness “should be ‘construed liberally’ to promote justice.” *See*  
22 *Van Dox v. Super Ct.*, 2008 Guam 7 ¶ 45 (quoting *Eagle Maint. & Supply Co. v. Super Ct.*, 16  
23 Cal.Rptr. 745, 747 (Dist.Ct.App. 1961)). A timely statement of objection is made “prior to any hearing  
24 before the challenged judge in the matter.” *Id.* at ¶ 46.

25  
26           Here, Judge Tolentino was assigned to this matter only one (1) day before the OAG filed their  
27 Objection. *See* Notice of Judge Assignment (Aug. 1, 2024); Objection (Aug. 2, 2024). During that  
28 timeframe, Judge Tolentino did not preside over any hearings or make any decisions concerning this

1 case. This left the OAG no earlier opportunity to raise the issue of disqualification to the Court. While  
2 parties must present statements of objection “at the earliest practicable opportunity after his or her  
3 appearance and discovery of the facts constituting the ground of the Justice's or Judge's  
4 disqualification”, they must be afforded that opportunity in the first place. See 7 G.C.A. § 6107. One  
5 (1) day is sufficiently within the “earliest practicable opportunity” window, especially since there  
6 were no hearings before the challenged judge in the interim. Id. Therefore, the Objection was timely  
7 filed and procedurally sound.

8 **III. The Objection is substantially defective because:**

9 **a. Jude Tolentino is *not* compelled to disclose his personal connection to Attorney**  
10 **General Moylan under the clear language of 7 G.C.A. §§ 6105 and 6106.**

11 The only circumstance in § 6105 requiring disqualification (absent a waiver following  
12 disclosure) involving the judge’s spouse is § 6105(b)(5) when the spouse is any of: (A) a party to the  
13 proceeding, or an officer, director, or trustee of a party; (B) acting as a lawyer in the proceeding; (C)  
14 known by the Judge to have an interest that could be substantially affected by the outcome of the  
15 proceeding; or (D) is to the Judge's knowledge likely to be a material witness in the proceeding. See  
16 7 G.C.A. § 6105(b)(5).

18 Judge Tolentino’s spouse is not a party to the proceeding, or an officer, director, or trustee of  
19 a party. She is not acting as a lawyer in the proceeding, nor is she known by Judge Tolentino to have  
20 an interest that could be substantially affected by the outcome of the proceeding. She is not, to Judge  
21 Tolentino’s knowledge, likely to be a material witness in the proceeding. Therefore, none of these  
22 circumstances exist to require that Judge Tolentino invoke the mandatory disclosure requirements of  
23 § 6106.

25 The circumstances of the OAG’s objection differ notably from the circumstances in *People v.*  
26 *Santos*, where the Guam Supreme Court found the provisions of § 6105(b) required a judge’s  
27 disqualification (absent a waiver following disclosure) when that judge was related within the third  
28 degree to the Chief Prosecutor of the OAG. See *People v. Santos*, 2018 Guam 12 ¶ 8. The Guam



1 Supreme Court concluded that the Chief Prosecutor was acting as a lawyer in the proceeding, even if  
2 they did not personally participate in the case, due to their supervisory responsibility over the  
3 performance of the attorney in the proceeding. Id. at ¶ 13. This same logic cannot be extended to  
4 Attorney General Moylan, despite any supervisory involvement he may have in this case, because  
5 Attorney General Moylan is not related within the third degree to Judge Tolentino. Therefore, 7  
6 G.C.A. § 6105(b) does not require Judge Tolentino’s disqualification here.

8 **b. Applying the “appearance of impropriety” standard, Judge Tolentino was not**  
9 **required to disclose under 7 G.C.A. § 6105(a).**

10 Section 6105(a) requires that “any judge shall disqualify himself or herself in any proceeding  
11 in which his or her impartiality might reasonably be questioned”. See 7 G.C.A. § 6105(a). When  
12 considering disqualification under § 6105(a), “what matters is not ‘actual bias,’ but ‘the appearance  
13 of bias.’” See *Van Dox v. Super Ct.*, 2008 Guam 7 ¶ 32 (citing *Dizon v. Super. Ct. (People)*, 1998  
14 Guam 3 ¶ 10 n.3). The appearance of bias is judged from the standard of a “reasonable person” who  
15 knows all the facts, and understands the “contents of the jurisdictions, parties, and controversies  
16 involved,” including such “realities of the Guam judicial system” as the relatively small number of  
17 lawyers in the Guam bar and “the nature of Guam families.” Id. ¶ 32 (citation omitted).

18 The Michigan Supreme Court held that “the appearance of impropriety” standard applies only  
19 where there is no clear rule or canon pertaining to the subject matter. See *Adair v. State of Michigan*  
20 *Dept. of Education*, 474 Mich. 1027, 1039 (Jan. 31, 2006). The Court reasoned “specific court rules  
21 or canons that pertain to a subject and that delineate what is permitted and prohibited judicial  
22 conduct... would be of little consequence if they could always be countermanded by the vagaries of  
23 an ‘appearance of impropriety’ standard”. Id. at 1039.

24 In this instant case, the non-disclosure of the relationship complained of by the OAG is covered  
25 by § 6105(5), which specifically lays out when a judge’s relationship to a lawyer in the proceeding  
26 warrants that judge’s disqualification. Importantly, by listing the prohibited relationships between a  
27 lawyer and the judge, § 6105(5) also states which relationships are permitted. Section 6105(5) lists  
28 several prohibited relationships, and being the ex-partner of the judge’s spouse is not one of them.

1 Because § 6105(5) delineates what is and isn't a prohibited relationship, the OAG cannot negate that  
2 rule by invoking the "appearance of impropriety" standard.

3 **c. Under an "objectively reasonable person" standard, Judge Tolentino was not**  
4 **required to disqualify himself in this case.**

5 Even if § 6105(a) was permitted to bypass the clear rule pertaining to this challenged  
6 relationship, no objectively reasonable person would question Judge Tolentino's impartiality here.

7 The American Bar Association ("ABA") acknowledged that "judges are ordinarily in the best  
8 position to assess whether their impartiality might reasonably be questioned when lawyers or parties  
9 with whom they have relationships ... appear before them." See ABA Formal Op. 488 (Sep. 5, 2019).  
10 The ABA also notes that "in smaller communities and relatively sparsely-populated districts, judges  
11 may have social and personal contacts with lawyers and parties that are unavoidable. *In that*  
12 *circumstance, too strict a disqualification standard would be impractical to enforce and would*  
13 *potentially disrupt the administration of justice."* Id. (emphasis added). The ABA also recognizes  
14 that over time relationships change "or may have ended sufficiently far in the past that it is not a  
15 current concern when viewed objectively." Id. "Finally, judges must avoid disqualifying themselves  
16 too quickly or too often lest litigants be encouraged to use disqualification motions as a means of  
17 judge-shopping, or other judges in the same court ... become overburdened." Id.

18 Adopting the recommendations of the ABA in its Formal Opinion 488, based on the objective  
19 reasonable person standard, and considering the Answer filed by Judge Tolentino and the judicial  
20 community and context in which the disqualification is sought, the Court makes the following  
21 findings:

- 22 • The circumstances previously requiring Judge Tolentino to disqualify himself have  
23 changed and, by Attorney General Moylan's own admission during the meeting  
24 between himself, his staff, Judge Tolentino, and the court staff, any conflict relating to  
25 the familial association between Judge Tolentino and Attorney General Moylan "no  
26 longer existed." See Answer at ¶ 7 (Aug. 5, 2024). Therefore, Judge Tolentino is not  
27 required to disqualify himself under § 6105(a).

28

