

FILED  
CLERK OF COURT

2024 SEP -5 AM 11:37

SUPERIOR COURT  
OF GUAM

IN THE SUPERIOR COURT OF GUAM

PEOPLE OF GUAM,

vs.

ERINA LEE MANIBUSAN QUICHOCHO,

Defendant.

CRIMINAL CASE NO. CM0249-24

**DECISION AND ORDER**

**INTRODUCTION**

This matter is before the Honorable Vernon P. Perez for the limited purpose of addressing the People of Guam's ("the Government") Statement of Objection 7 GCA § 6107 and Motion to Disqualify filed August 21, 2024.

**BACKGROUND**

On August 17, 2024, Defendant Erina Lee Manibusan Quichocho ("Defendant") was charged with (1) Driving While Impaired with a BAC of 0.08 or More (As a Misdemeanor); and (2) Driving While Impaired (As a Misdemeanor). (Magistrate's Compl., Aug. 17, 2024).

On August 20, 2024, this matter was assigned to Judge Alberto E. Tolentino. *See* Notice of Judge Assignment, Aug. 20, 2024.

On August 21, 2024, the Government filed a Statement of Objection 7 GCA § 6107 and Motion to Disqualify ("Objection"), moving for Judge Tolentino's recusal in this matter. The Government moves for Judge Tolentino's recusal pursuant to 7 G.C.A. § 6105(a) because of

1 Judge Tolentino's familial relationship with Attorney General Douglas B. Molyan.<sup>1</sup> See  
2 generally, Objection, Aug. 21, 2024.

3 On August 26, 2024, Judge Tolentino filed his Answer to Statement of Objection,  
4 challenging the timeliness of the objection and denying that his recusal is appropriate in this  
5 matter. See generally, Answer, Aug. 26, 2024.

6 On August 26, 2024, pursuant to 7 G.C.A. § 6107, the question of whether Judge  
7 Tolentino should be disqualified from continuing to preside over this matter came before this  
8 recusal court. See Notice of Assignment of Recusal Judge, Aug. 26, 2024.

### 9 DISCUSSION

10 Title 7 G.C.A. section 6105 sets forth the substantive grounds under which a judge must  
11 be disqualified. Where a judge fails to disqualify him or herself, any party to that proceeding may  
12 move to disqualify the judge pursuant to 7 G.C.A. § 6107.

#### 13 A. Statement of Objection

14 The Government moves to disqualify Judge Tolentino in this matter based on the  
15 following grounds:

- 16 • That from 2014 to 2022, Judge Tolentino disqualified himself from cases  
17 involving Attorney General Moylan as a private attorney on the basis of the  
18 familial relationship that exists between them;
- 19 • That Judge Tolentino stated that disqualification was necessary because  
20 Attorney General Moylan is the father of his step-children;
- 21 • That Judge Tolentino's last Form One-Disqualification in this regard was filed  
22 on October 27, 2022;
- 23 • That the basis for Judge Tolentino's prior disqualifications hasn't changed;
- 24 • That a reasonable person would presume that Judge Tolentino's personal  
25 relationship with Attorney General Moylan and his prior years disqualifying

---

26 <sup>1</sup> Attached to the Government's Statement of Objection are several exhibits, including a Decision and Order issued  
27 by Judge Iriarte on June 4, 2024 in *People v. Taitingfong*, Criminal Case No. CF0024-24, and several Form One –  
28 Disqualification 7 GCA § 6106 memorandums issued by Judge Tolentino recusing himself from cases involving  
Attorney General Moylan when he was in private practice based on section 6105(a) up until October 27, 2022.

1 himself from any matters involving AG Moylan would raise a reasonable  
2 question about his impartiality and necessitate his disqualification;

- 3 • That Judge Tolentino has been disqualified from presiding over other cases  
4 based on the above facts; and
- 5 • That *San Agustin v. Superior Ct. of Guam*, 2024 Guam 2, required the Clerk  
6 of Court to refrain from assigning cases to Judge Tolentino once he was  
7 disqualified.

8 *See* Objection, Aug. 21, 2024.

9 In his answer, Judge Tolentino sets forth under penalty of perjury the following relevant  
10 facts:

11 6. That at Mr. Moylan's request, a meeting between him and the undersigned, the  
12 undersigned's chamber staff, the Administrator of the Courts, and Mr. Moylan's  
13 transition chairperson, Mr. Wilfred Aflague, occurred in December 2022;

14 7. That at this meeting, Mr. Moylan assured me and the other members in  
15 attendance that he perceived no conflict in his election as the Attorney General and  
16 the prosecution of criminal cases before the undersigned. It was agreed that the  
17 circumstances underlying my recusal in matters that Mr. Moylan was a lawyer no  
18 longer existed, to wit: that during my term as the Magistrate Judge and as a Judge  
19 I had routinely recused myself from all matters where Mr. Moylan was the attorney  
20 of a party before me on the basis that he was the father of my minor step-children  
21 and that the minor step-children were members of and resided in the household  
22 maintained by me and my wife and that as of even date, both step-children have  
23 now reached majority and adulthood and have been residing at their own residences  
24 in Guam and in the U.S. Mainland;

25 8. That Mr. Moylan never made an appearance as a lawyer in this case.

26 9. That neither Mr. Moylan nor the Office of the Attorney General had ever  
27 challenged or objected to me presiding over this case until the instant Statement of  
28 Objection and Motion to Disqualify filed herein.

\* \* \*

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);

15. That my wife and I have been together since 2001 and that we were married  
civilly in 2005 and eventually in the Roman Catholic Church in December 2023;

16. That we have five children inclusive of Brandon and Angela;

1 17. That since my wife and I have been together I have never observed Mr. Moylan  
2 and my wife involved in any sense in co-parenting the children of their marriage as  
3 the children have been raised and provided with protection and care to ensure their  
4 healthy development into adulthood, primarily by my wife and me, and that at  
present they are in fact adults able to conduct and make their own decisions in life;

5 18. That based upon the foregoing averments, the fact that Attorney General  
6 Moylan is the biological father of the undersigned's stepchildren provides no basis  
7 for disqualification under 7 GCA § 6105(b) or that the undersigned's impartiality  
might be reasonably questioned as required under subsection (a).

8 (Answer at 3-4, Aug. 26, 2024).

9 **B. Timeliness of Objection**

10 The first issue before the Court is whether the Government's Objection was timely filed,  
11 as Judge Tolentino challenges the timeliness of the Government's Objection. (Answer at ¶¶ 9-  
12 13). Pursuant to section 6107:

13 The statement of a party objecting to the Justice or Judge on the ground of his or  
14 her disqualification shall be presented at the earliest practicable opportunity after  
15 his or her appearance and discovery of the facts constituting the ground of the  
16 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.

17 7 G.C.A. § 6107. "The rule that a request for disqualification should be submitted prior to any  
18 hearing in the matter before the challenged judge rests on the principle that a party may not gamble  
19 on a favorable decision. Thus, a statement of objection is normally timely if it is submitted prior  
20 to any hearing before the challenged judge in the matter." *Van Dox v. Superior Ct. of Guam*,  
21 2008 Guam 7 ¶ 46 (internal quotation marks and citation omitted). "[A] statement may be  
22 untimely if a party waits until the eve of trial to request disqualification based on information  
23 made known months earlier." *Id.* (citing *People v. Panah*, 107 P.3d 790, 824 (Cal. 2005)).

24 Here, the Government's Statement of Objection was filed prior to the commencement of  
25 the hearing of any issue of fact in the action or proceeding before Judge Tolentino. The case was  
26 assigned to Judge Tolentino on August 20, 2024, and the Government's Statement of Objection  
27 was filed the following day, August 21, 2024. According to the Court's case management system,  
28

1 at the time of filing of the Objection, no hearings had been calendared or heard before Judge  
2 Tolentino in the instant matter. However, the Court does not find that the timeliness analysis ends  
3 there. The facts that form the basis of the Statement of Objection are not newly discovered to the  
4 Government and Judge Tolentino has presided over criminal matters involving the Government  
5 since Attorney General Moylan took office in January 2023. *See Answer* ¶ 4 (“I . . . have been a  
6 Judge of the Superior Court of Guam since September 2021, and that my docket consists mostly  
7 of criminal matters brought by the People of Guam through the Office of the Attorney General.”).  
8 It was not until over a year later in May 2024 that the Government first moved to disqualify Judge  
9 Tolentino. *See People v. Ybanez, et al.* (CF0447-23) Dec. & Order at 5, Jun. 12, 2024 (noting the  
10 Statement of Objection and Motion to Disqualify was filed on May 1, 2024). The Government  
11 has since moved to disqualify Judge Tolentino in a number of criminal cases,<sup>2</sup> but not all of his  
12 criminal docket.<sup>3</sup> Therefore, while the timeliness of an objection would normally be case specific,  
13 the circumstances of the objections being filed in some but not all cases before Judge Tolentino,  
14 despite the basis of all objections being substantially the same, require the Court to view them in  
15 light of his entire criminal docket, as all criminal matters are brought by the Office of the Attorney  
16 General on behalf of the People of Guam. “7 GCA § 6105 is not intended to ‘bestow veto power  
17 over judges or to be used as a judge shopping device.’” *San Agustin*, 2024 Guam 2, ¶ 24 (citing  
18 *People v. Camaddu*, 2015 Guam 2 ¶ 80).

19 “Guam law does not speak explicitly of waiver, but does require that ‘all parties agree.’  
20 Rather than interpreting ‘agree’ to mean that the parties must expressly agree to waive the judge’s  
21 disqualification, we held that remaining silent constitutes waiver, at least in the context of 7  
22

---

23 <sup>2</sup> This Court, for example, has been assigned as recusal judge for the instant matter (CF0391-24), *People v. Buchun*,  
24 (CF0458-24), *People v. Rikat* (CM0193-24), *People v. Ada* (CF0520-24), *People v. Timothy* (CM0229-24), and  
25 *People v. Quichocho* (CM0249-24). The Statement of Objection filed in each case is substantially the same. Judge  
26 Tolentino’s Answer also refers to objections being filed in *People v. Mantanona* (CM0203-24); *People v. Babauta*  
(CF0443-24); *People v. Enlet* (CM0322-22); *People v. Sanres* (CF0461-24); *People v. Rabago* (CF0423-24); and  
*People v. Alipich* (CF0449-24). (Answer ¶ 24).

27 <sup>3</sup> Judge Tolentino asserts in his Answer that “if there truly is concern with the undersigned’s impartiality or  
28 appearance of partiality then by movant’s logic the disqualification should have extended to the undersigned’s entire  
criminal docket of pending and post-adjudication further proceedings.” (Answer ¶ 34).

1 G.C.A. § 6105(a), ‘to avoid the possibility of parties lying in wait, raising the recusal issue only  
2 after learning the court's ruling on the merits.’” *People v. Wia*, 2020 Guam 17 ¶ 28 (internal  
3 alterations and citations omitted). In the context of 7 G.C.A. § 6105(b), the Supreme Court of  
4 Guam adopted the “silence-as-wavier” rule on a case-by-case basis. *Id.* at ¶ 30. The “silence-as-  
5 waiver” includes failure to object based on information previously known to the parties through  
6 separate litigation. *Id.* at ¶ 27 (finding that the silence-as-waiver rule rendered the defendant’s  
7 objection waived and untimely because the defendant aware of the disqualification issue through  
8 his counsel’s involvement in other criminal cases).

9 In his Answer, Judge Tolentino states that he and Attorney General Moylan met in  
10 December 2022 with court administration and staff whereby “[i]t was agreed that the  
11 circumstances underlying [Judge Tolentino’s] recusal in matters that Mr. Moylan was a lawyer  
12 no longer existed.” (Answer ¶ 7). The Government has not contested this fact in this matter nor  
13 in any of the other cases assigned to this recusal court. Thus, Attorney General Moylan appears  
14 to have waived any conflict on behalf of the Government prior to the start of his term in January  
15 2023. At this time, the Court is unaware of any objection set forth by the Government to Judge  
16 Tolentino presiding over any criminal matter prior to *People v. Ybanez*, CF0447-23, on May 1,  
17 2024.<sup>4</sup> The Government therefore did not move to disqualify Judge Tolentino in any criminal  
18 matter for sixteen months after Attorney General Moylan took office (January 2023 to April  
19 2024). The Government has not presented any newly discovered facts or change in circumstances  
20 relating to the familial relationship between Judge Tolentino and Attorney General Moylan that  
21 would render Attorney General Moylan’s December 2022 waiver of any conflict moot. The Court  
22 further notes that while the issue of Judge Tolentino’s competency was first addressed in *People*  
23 *v. Aguon*, CM0145-21 in Spring 2024, it was through a motion filed by the defendant, not the  
24

---


25 <sup>4</sup> The Government has not shown that it has objected to Judge Tolentino presiding over any criminal matter prior to  
26 *People v. Ybanez*. The Court acknowledges that on May 24, 2024 (twenty-three days after the filing of an objection  
27 in *Ybanez*), the Government orally agreed with Defendant Taitingfong in CF0024-24 that Judge Tolentino was  
28 disqualified from presiding over her case in light of the familial relationship between Judge Tolentino and Attorney  
General Moylan. See *People v. Taitingfong* (CF0024-24) Dec. & Order at 4 fn. 1, Jun. 4, 2024. It does not appear  
that the Government itself also filed an Objection to Judge Tolentino presiding in that matter. See *id.*

1 Government, and in the context of a Motion to Disqualify the Prosecutor and not a ruling on a  
2 Statement of Objection to Judge Tolentino's competency. *See* Dec. & Order at 4-5, *People v.*  
3 *Aguon* (CM0145-21), Apr. 5, 2024 ("On March 1, 2024, the Court heard new arguments on the  
4 Motion to Withdraw the Prosecutor. There, in addition to the issue of AAG Olan's alleged  
5 statements, Defendant asserted there had been an undisclosed familial relationship between Judge  
6 Tolentino and Douglas Moylan . . ."). At the time of that Decision and Order in CM0145-21,  
7 Judge Tolentino had already recused himself from the matter, albeit on different grounds. *See*  
8 *id.* at 2. In light of the foregoing, the Court finds that the Government's silence for over a year,  
9 despite being aware of the facts forming the basis of the disqualification, amounts to a waiver of  
10 any objection to Judge Tolentino presiding over cases involving the Office of the Attorney  
11 General based on the familial relationship between Judge Tolentino and Attorney General  
12 Moylan.

### 13 CONCLUSION

14 For the foregoing reasons, the Court hereby DENIES the Government's Statement of  
15 Objection and Motion to Disqualify. The Court returns the matter to Judge Tolentino for further  
16 disposition.

17 **IT IS SO ORDERED** this 5<sup>th</sup> day of September, 2024.

18  
19  
20  
21   
22 HONORABLE VERNON P. PEREZ  
23 Judge, Superior Court of Guam  
24  
25  
26  
27  
28