

VICTOR M. YANO,
Appellant,

v.

JENNIFER SUGIYAMA YANO,
Appellee.

CIVIL APPEAL NO. 11-011
Civil Action No. 09-287

Supreme Court, Appellate Division
Republic of Palau

Issued: December 14, 2012

[1] **Courts:** Recusal

Under Canon 2.5, a judge facing a motion for disqualification must address his actual and apparent ability to decide the case impartially. First, the judge must decide whether he is able to decide the matter impartially. If he is unable to do so, he must recuse himself unless one of the emergency exceptions is implicated. If the judge concludes he is able to decide the matter impartially, the question becomes whether his impartiality would be questioned by a reasonable observer. If his impartiality would be questioned, then disqualification is required unless an emergency exception is present. If his impartiality would not be questioned, then the motion for disqualification must be denied.

[2] **Courts:** Recusal

Prejudice growing out of business, political, or social relations generally is insufficient to disqualify a judge.

[3] **Courts:** Recusal

The general rule against business or social relationships serving as a basis for disqualification carries particular weight when a judicial district lies in rural or sparsely populated area where a judge is likely to interact frequently with attorneys and potential litigants.

[4] **Courts:** Recusal

A party seeking to disqualify a judge based on a familial relationship not enumerated in Canon 2.5.5 must show additional circumstances that would lead a reasonable observer to question the judge's impartiality.

[5] **Courts:** Recusal

Palau, like the less populous judicial districts in the United States, has a limited supply of businesses and professionals. To hold that a judge could be disqualified automatically based on any business (or personal) relationship with a party, particularly one which ended years ago, would be to severely limit a judge's ability to function in the community, to function as a judge, or both. A previous business relationship with one of the few medical doctors on the island is a sufficiently common occurrence so as to deprive such relationship of any appearance of partiality

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BEFORE: ARTHUR NGIRAKLSONG,
Chief Justice; KATHLEEN M. SALII,
Associate Justice; and LOURDES F.
MATERNE, Associate Justice.

Appeal from the Supreme Court, Trial Division, the Honorable ALEXANDRA F. FOSTER, Associate Justice, presiding.

PER CURIAM:

This matter is before the Court on Appellee Jennifer Sugiyama Yano's Motion to Disqualify the above-named panel from assignment to this appeal. For the reasons set forth below, Appellee's motion is **DENIED**.

BACKGROUND

On November 5, 2012, this Court issued an order advising the parties that each of the Justices assigned to the appeal had potential conflicts of interest with regard to the parties to this proceeding ("Notification Order"). In particular, we informed the parties that:

1. Chief Justice Arthur Ngirakl-song has had a long-time relationship with Appellant Victor M. Yano as a medical patient of the Appellant;
2. Associate Justice Kathleen M. Salii has had a long-time relationship with Appellant Victor M. Yano as a medical patient of the Appellant; and
3. Associate Justice Lourdes F. Materne has had a long-time relationship with Appellant Victor M. Yano as a medical patient of the Appellant [and] is related to the Appellant through her mother, who is a first cousin to the Appellant's father.

Although we disclaimed any actual bias against any part, we afforded “the parties and their counsel an opportunity to consider the conflicts of interest disclosed . . . and to file . . . either: (1) a signed conflict waiver . . . or (2) the parties’ specific objections to the continued service of the Justices on this panel.” Appellant filed a signed waiver; Appellee moved to disqualify all three Justices on the panel.

DISQUALIFICATION STANDARD

Canon 2.5 of the ROP Code of Judicial Conduct provides, in relevant part, that “[a] judge shall disqualify himself . . . from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially.” The Canon also enumerates a non-exhaustive list of situations when disqualification is required and a corresponding exception whereby “disqualification of a judge shall not be required if constituting another tribunal to deal with the case is not practical or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.”

[1] Thus, under Canon 2.5, a judge facing a motion for disqualification must address his actual and apparent ability to decide the case impartially. First, the judge must decide whether he is able to decide the matter impartially. If he is unable to do so, he must recuse himself unless one of the emergency exceptions is implicated. If the judge concludes he is able to decide the matter impartially, the question becomes whether his impartiality would be

questioned by a reasonable observer. If his impartiality would be questioned, then disqualification is required unless an emergency exception is present. If his impartiality would not be questioned, then the motion for disqualification must be denied.

All Justices on this panel have disclaimed any actual bias or prejudice against either party. Accordingly, we now address whether disqualification is warranted under the apparent partiality standard. In this regard, Appellee seeks recusal based on the argument that the Justices’ familial relations with Appellant and Appellee and their doctor-patient relationships with Appellant would cause a reasonable observer to question the panel’s impartiality.

I. Doctor-Patient Relationships

[2, 3] “Prejudice growing out of business, political, or social relations generally is insufficient to disqualify a judge.” 46 Am. Jur. *Judges* § 141. The general rule against business or social relationships serving as a basis for disqualification carries particular weight when a judicial district lies in rural or sparsely populated area where a judge is likely to interact frequently with attorneys and potential litigants. *U.S. v. DeTemple*, 162 F.3d 279, 287 (4th Cir. 1998) (quoting *In re Allied-Signal Inc.*, 891 F.2d 967, 971(1st Cir. 1989) (Breyer, J.)) (“[T]he more common a potentially biasing circumstance and the less easily avoidable it seems, the less that circumstance will appear to a knowledgeable observer as a sign of partiality.”); *see also* 46 Am. Jur. *Judges* § 141 (2006) (“Disqualification generally has not been mandated simply because a judge

knows socially one or more of the parties, particularly in rural districts, where it is not at all uncommon for a judge to have a friendly relationship with numerous members of the community, [and to] adjudicate legal issues which arise among community members.”). As the Supreme Court of Wyoming wrote:

A judge would not be very effective or efficient in a [small] community, if he were bound to recuse himself from cases involving those with whom he had ‘close political affiliations and social relationships’ or with whom he had been ‘a close personal friend throughout a greater part of’ his life. There is no more of a disposition for a judge to rule in favor of an acquaintance or friend because of that fact than there is a disposition for him to rule against an acquaintance or friend because of that fact. The fact of friendship could result in a ‘leaning over backwards’ to maintain impartiality, or it could result in the opposite.

Kobos By and Through Kobos v. Sugden, 694 P.2d 110, 111–12 (Wyo. 1985).¹

II. Familial Relationships

With regard to familial relations, Canon 2.5.5 provides that grounds for disqualification will be present where “the judge is related within the first or second degree, either by consanguinity or affinity, to a party, lawyer, or material witness.” “‘Within the first degree’ includes persons related to the judge by consanguinity or

affinity as a natural or adoptive child, grandchild, great-grandchild, parent, brother, sister, nephew, niece, great-grand nephew, or great-grand niece.” ROP Code of Judicial Conduct, Canon 8.4.8. “‘Within the second degree’ includes persons related to the judge by consanguinity or affinity as a natural or adoptive grandparent, uncle, aunt, first cousin, first cousin once removed, first cousin twice removed, or first cousin thrice removed.” ROP Code of Judicial Conduct, Canon 8.4.9.

[4] Where members of a list are part of an “associated group or series,” an inference arises that “items not mentioned were excluded by deliberate choice, not inadvertence.” *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003). When read together, Canons 2.5.5, 8.4.8, and 8.4.9 set forth a specific grouping of familial relations justifying disqualification. The enumerated relationships are sufficiently similar to justify the conclusion that the absence of additional relationships from 2.5.5 was intentional. *Id.* This intentional exclusion convinces us that Canon 2.5.5 was intended to represent the complete list of per se disqualifying familial relationships. Thus, we hold a party seeking to disqualify a judge based on a familial relationship not enumerated in Canon 2.5.5 must show additional circumstances that would lead a reasonable observer to question the judge’s impartiality.

DISCUSSION

I. Chief Justice Ngiraklsong

Chief Justice Ngiraklsong maintained a doctor-patient relationship with Appellant for a number of years. However,

¹ Although *Kobos* involved a claim of actual (rather than apparent) bias, the reasoning underlying the decision applies here.

such relationship ended many years ago. Appellee seeks disqualification of the Chief Justice based on this doctor-patient relationship and on the fact that he is a “close relative” of Appellee. Specifically, Appellee claims that the “Chief Justice is a relative of Appellee’s mom via Esuroi of Idid to Milong and from Milong to Ngeribkal of Ngerbeched.”

[5] Palau, like the less populous judicial districts in the United States, has a limited supply of businesses and professionals. To hold that a judge could be disqualified automatically based on any business (or personal) relationship with a party, particularly one which ended years ago, would be to severely limit a judge’s ability to function in the community, to function as a judge, or both. We decline to do so here. Rather, we conclude that a previous business relationship with one of the few medical doctors on the island is a sufficiently common occurrence so as to deprive such relationship of any appearance of partiality.² *In Re Allied Signal Inc.*, 891 F.2d at 971.

Appellee also seeks to disqualify the Chief Justice based on familial relationship not listed in 2.5.5. For the reasons set forth above, we hold that these two grounds for disqualification (either on their own or together) would not cause a reasonable observer to question the Chief Justice’s impartiality.

² In her motion for disqualification, Appellee analogizes a doctor-patient relationship to an attorney-client relationship. Assuming without deciding the validity of this comparison, we note that an appearance of bias based on an attorney-client relationship lessens over time and that, therefore, such analogy would provide no relief to Appellee here. *See* 46 Am. Jur. *Judges* § 145 (2004).

II. Justice Salii

Justice Salii saw Appellant as a physician for an extended period of time before changing doctors approximately seven years ago. Appellee seeks to disqualify Justice Salii based on Justice Salii’s doctor-patient relationship with Appellant and based on the fact that “Appellee’s mother and Associate Justice Salii’s mom are relatives of the Clan of Ilou of Ngerbeched.” As explained above, such grounds (a past doctor-patient relationship and an attenuated familial connection) are insufficient to support a finding of an appearance of partiality.

III. Justice Materne

Justice Materne has elected to recuse herself from hearing this appeal. Accordingly, Appellee’s motion seeking the disqualification of Justice Materne must be denied as moot.

Pursuant to Article X, Section 12 of the Palau Constitution, Guam Supreme Court Justice Katherine A. Maraman is hereby appointed to serve on the appellate panel as Associate Justice Pro Tem.

CONCLUSION

For the reasons set forth above, Appellee’s motion for disqualification is **DENIED**. Finally, it appearing that this Case presents novel questions of law, oral argument in this matter is set for 10:00 a.m. on February 26, 2013.