FILED

IN THE SUPREME COURT OF GUAM

PEOPLE OF GUAM
Plaintiff-Appellee

v.

GENE A. TENNESSEN,
Defendant-Appellant

DOUGLAS B. MOYLAN
Real Party in Interest

OPINION

Cite as: 2010 Guam 12

Supreme Court Case No.: CRA09-012
Superior Court Case No.: CF0292-02

Appeal from the Superior Court of Guam
Argued and submitted on May 14, 2007
Hagåtña, Guam

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BEFORE: Miguel S. Demapan, Chief Justice Pro Tempore; Alexandro C. Castro, Associate Justice Pro Tempore; John A. Manglona, Associate Justice Pro Tempore.

PER CURIAM:

[1] This matter comes before the Court on the request of Appellant (and self-styled Real Party in Interest) Douglas Moylan to disqualify Chief Justice Robert J. Torres, Associate Justice F. Philip Carbullido, and Justice Pro Tempore Richard H. Benson from presiding over this appeal. Moylan seeks the disqualification of all three justices pursuant to 7 GCA § 6107 (which allows "any party to [the] action or proceeding" to file a statement of objection to a judge or justice) and 7 GCA § 6105 (which sets forth the substantive grounds for judicial disqualification).[1] 7GCA § 6107 (2005). For the reasons discussed below, this panel is reluctant to characterize Moylan as a "party" within the meaning of 7 GCA § 6107 and thereby confer statutory standing to seek disqualification where none exists. Given the unique circumstances presented in this case, however, we find it judicially prudent to address the merits of Moylan's disqualification request. We hold that Moylan has stated no grounds under 7 GCA § 6105 meriting the disqualification of any of the justices. Accordingly, Moylan's statements of objection to the justices' participation in this appeal are hereby DISMISSED.

I. FACTUAL AND PROCEDURAL BACKGROUND

[2] In 2002, the Office of the Attorney General instituted criminal proceedings against Gene Tennessen (the named defendant in this case) for various allegations unrelated to the present matter. In 2004, while Tennessen's criminal case remained pending at the trial court, he was listed as a witness for the prosecution in a criminal case against the then-acting Attorney General

[1] All three justices have filed answers to Moylan's objections and this panel has been instituted pursuant to 7 GCA § 6107 to rule on Moylan's objection to the justices' participation in this appeal.

of Guam Douglas Moylan. The criminal action against Moylan involved an accusation of domestic assault made by Moylan's former wife, Doris Leon Guerrero. Tennessen's involvement in Moylan's criminal case stemmed from the fact that he is married to Ms. Leon Guerrero's cousin and he advised Ms. Leon Guerrero to file charges against Moylan.

[3] Given the conflict of interest presented by the above scenario in which Tennessen was listed as a witness in an unrelated criminal case against the Attorney General, Tennessen filed a motion for dismissal of the indictment in his own criminal case. The trial court denied Tennessen's motion to dismiss the indictment, but issued an order erecting a "conflict wall" around Moylan to ensure the prosecutor and Tennessen's defense counsel could conduct plea negotiations "in a productive, open, and honest manner without any interference or participation from Moylan." Excerpts of Record ("ER") at 5 (Dec. & Order, Mar. 26, 2004). In its order, the trial court stated: "Moylan shall not discuss this case with anyone, shall not review files concerning this case, shall not have access to any files or information concerning this case, and shall not obtain or share confidential information concerning this case with anyone."[2] *Id.* at 5.

[4] In October 2005, one month before Tennessen's trial was scheduled to begin, Tennessen filed a second motion. The second motion sought to disqualify the entire Attorney General's Office based on the allegation that Moylan had discussed the case with the media in violation of the trial court's order. The court dismissed the motion but ordered the conflict wall remain in place. Tennessen was thereafter convicted and filed a notice of appeal. On appeal, this Court (composed of Chief Justice Torres, Associate Justice Carbullido, and Justice Pro Tempore

[2] At argument, Moylan asserted that he was unaware of the order until after this Court issued its opinion finding that the conflict wall had not been effective and reversing Tennessen's conviction. Whether Moylan was aware of the order is irrelevant to the disqualification matter now before the Court, but we note that even if Moylan had no actual personal knowledge of the order, he certainly *should have known* the order was issued by virtue of the fact that order was directed to the Attorney General's Office and Moylan was the head of that office.

Benson) reversed the conviction due to the break-down of the conflict wall and remanded for further proceedings. *People v. Tennessen*, 2008 Guam 21, *superseded by People v. Tennessen,* 2009 Guam 3 at ¶ 5. The Court specifically found that "the undisputed facts led to the conclusion that Moylan violated [the court's] order." *Id.* at ¶ 47.[3]

[5] After Tennessen's case had been disposed of on appeal, Moylan brought a motion before the trial court seeking to vacate the order erecting the conflict wall *nunc pro tunc*.[4] On August 20, 2009, the trial court vacated the order as moot but refused to do so *nunc pro tunc*. *See Id.* Moylan has now appealed, styling himself as "Real Party in Interest," under the caption *People v. Tennessen* to which he was not a party or to which he never sought to formally intervene.[5] On appeal Moylan characterizes the order as a "permanent injunction restraining speech and liberty," and argues that the issuance of the order without providing Moylan an opportunity to respond violated his constitutional right to due process. He asserts that he was wrongly

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[3] At argument, Moylan repeatedly characterized the statements made in 2008 Guam 21 and 2009 Guam 3 as a finding of contempt. We take issue with this characterization. The word "contempt" has a technical legal meaning referring to the imposition of sanctions by a court to coerce compliance with a court order or to punish a party or lawyer for acting in opposition to the court's authority. *See* 7 GCA §§ 34101-34102 (2005) (setting forth the specific actions constituting contempt and the procedural requirements that must be adhered to prior to the imposition of sanctions upon a finding of contempt); *Latrobe Steel Co. v. United Steelworkers of America*, 545 F.2d 1336, 1343 (3d Cir. 1976) (stating that criminal contempt proceedings "are separate from the actions which spawned them"). The statements made by this Court in 2008 Guam 21 and 2009 Guam 3 did not impose sanctions on Moylan or in any way seek to punish him for failing to comply with the trial court's order. The Court's focus, as in all criminal appeals, was on whether the defendant had received a fair trial. Moylan's characterization of the Court's statements as a finding of contempt stretches the boundaries of permissible good faith argumentation to the breaking point. We caution lawyers from being too liberal with their use of terms of art. Artful advocacy should not border on misrepresentation; such actions are in themselves contemptuous.

[4] "*Nunc pro tunc*" is a Latin expression meaning "now for then." A court ruling "*nunc pro tunc*" applies retroactively to correct an earlier ruling. *See* Black's Law Dictionary at 1097 (7th ed. 2004).

[5] At argument Moylan conceded that it would have been procedurally improper for a prosecuting attorney to seek intervention in a criminal case. On this point, we agree with Moylan. In the civil context nonparties cannot appeal an adverse decision without first seeking, and being granted, intervention, regardless of their interest. *See Felzen v. Andreas*, 134 F.3d 873, 874 (7th Cir. 1998). No corollary exists in the criminal context. Even in the civil context, however, the assertion that the result of an action will cause damage to a person's reputation has been held not to constitute the kind of legal detriment which will support intervention under Federal Rule of Civil Procedure 24(a)(2). *See Edmondson v. Nebraska*, 383 F.2d 123, 127 (8th Cir. 1967).

subjected to an ethical investigation as a consequence of the court decisions holding that he violated the conflict wall.

[6] At a status conference preceding oral argument in this case Moylan objected to the participation of Chief Justice Torres, Associate Justice Carbullido, and Justice Pro Tempore Benson. The Court ordered Moylan to make his objections in writing. Moylan has now filed three statements of objection pursuant to 7 GCA §§ 6105 and 6107 seeking the disqualification of the above named justices. The facts alleged by Moylan as warranting disqualification can be summarized as follows: (1) that Chief Justice Torres represented Moylan in his divorce proceedings, the facts of which Moylan claims are related to the present appeal; (2) that Associate Justice Carbullido's former law firm represented Moylan's ex-wife in the above mentioned divorce proceedings, the facts of which Moylan also claims are related to the present appeal; and (3) that the opinion issued by this Court in 2008 Guam 21, superseded by 2009 Guam 3, disposing of Tennessen's original appeal contained statements demonstrating that the above named justices have prejudged the issues underlying the instant appeal. The facts concerning these alleged conflicts are discussed in more detail below.

[7] All three justices have filed answers to Moylan's objections in which they decline to abstain from participating in the appeal. The Guam Code provides that "[n]o Justice or Judge who shall deny his or her qualification shall hear or pass upon the question of his or her own disqualification, but in every case the question of the Justice's or Judge's disqualification shall be heard and determined by some other Judge." 7 GCA § 6107. This Panel has been instituted pursuant to 7 GCA § 6107 to rule on Moylan's statements of objection.

II. DISCUSSION

[8] Two statutory provisions govern judicial disqualification in Guam. Title 7 GCA § 6105 sets forth the substantive grounds under which judges and justices are required to automatically disqualify themselves and 7 GCA § 6107 provides the procedural framework governing disqualification. When a judge or justice fails to disqualify him or herself and a party believes that the judge should be disqualified, § 6107 allows "any party to such action or proceeding" to file a statement of objection to the judge's continued participation in the proceeding. In this case, all three justices contend that Moylan cannot object to their participation in this appeal pursuant to § 6107 because he was not a party to the underlying action. Whether a statement of objection satisfies the procedural requirements of § 6107 is a "threshold determination" that is "separate and independent from an evaluation of the alleged grounds for a judge's disqualification." *People v. Johnny*, 2006 Guam 10 ¶ 12. As such, this panel will address the procedural issue raised by the justices before reaching the merits of Moylan's objection.

A. Moylan is not a party for purposes of 7 GCA § 6107.

[9] The issue of whether Moylan is a "party" within the meaning of § 6107 is a matter of statutory interpretation, and like all such matters the analysis must begin with the language of the statute itself. *Aguon v. Gutierrez*, 2002 Guam 14 ¶ 6 ("In cases involving statutory construction, the plain language of a statute must be the starting point.") (quoting *Pangelinan v. Gutierrez*, 2000 Guam 11 ¶ 23). Title 7 GCA § 6107 provides in pertinent part:

> Whenever a Justice or Judge . . . neglects or fails to declare his or her disqualification in the manner provided by this Chapter *any party to such action or proceeding* . . . may present to the court and file with the clerk a written statement . . . setting forth the fact or facts constituting the ground of the disqualification of such Justice of Judge.

7 GCA § 6107 (emphasis added).

[10] In addressing whether Moylan is a "party" within the meaning of the above quoted language, we are guided by the well settled rule of statutory construction that terms of art – words that carry an accepted or specialized meaning at common law – are to be construed in light of their accepted technical meaning unless the legislature has indicated otherwise. *See Morissette v. United States*, 342 U.S. 246, 263 (1952) ("W]here [the legislature] borrows terms of art in which are accumulated the legal tradition and meaning of centuries of practice, it presumably knows and adopts the cluster of ideas that were attached to each borrowed word in the body of learning from which it was taken."). By its own terms § 6107 only allows a "party to such action or proceeding" to seek disqualification. 7 GCA § 6107. We must decide whether Moylan – who was not a named party to the criminal proceedings below, but who was the subject of an order by the trial court in his capacity as the Attorney General of Guam – is a "party to such action or proceeding" within the meaning of 7 GCA § 6107. *Id.*

[11] While the term "party" is not defined in the Guam disqualification statute, we are not entirely without guidance. Other jurisdictions have held that the word "party" carries a technical legal meaning (it is a term of art) referring to those by or against whom a legal suit is brought; that is, the named plaintiff or defendant of record in a lawsuit. *Anderson v. Miller*, 324 P.2d 856, 859 (Okla. 1958) (quoting 39 Am.Jur. 851, Parties, sec.4) (internal quotation marks omitted) ("The term 'parties' is a technical word which has a precise meaning in legal parlance. It designates the opposing litigants in a judicial proceeding . . . ."); *see also Newman v. Newman*, 663 A.2d 980, 986-87 (Conn. 1995) ("[O]rdinarily, the term party has a technical legal meaning, referring to those by or against whom a legal suit is brought.") (internal quotations omitted); *Arizona v. Lamberton*, 899 P.2d 939, 941-42 (Ariz. 1995) ("[No] citizen has a legally enforceable interest, public or private, in the commencement, conduct, or outcome of criminal

proceedings against another. The parties to a criminal action are the defendant and the state.") (internal quotations and citation omitted).

[12] In *Munson v. Dir. of Revenue*, 783 S.W. 2d 912 (Mo. 1990), the Missouri Supreme Court interpreted the phrase "[a]ny party to a suit" – contained in its statute granting appellate jurisdiction – as limited to named parties of record. 783 S.W.2d at 915. In reaching this conclusion the court stated:

> Persons who are not parties of record to a suit have no standing therein which will enable them to take part in or control the proceedings. If they have occasion to ask relief in relation to the matters involved, they must either contrive to obtain the status of parties in the suit or they must institute an independent suit. One who is not a party to the record is not a party to the cause, although he or she may be interested, and in deciding who are parties to the record, the courts will not look beyond the record.

Id. (quoting 59 Am. Jur. 2d Parties § 8 (1987)). Similarly, in *Anderson*, 324 P.2d 856 (Okla. 1958), the Oklahoma Supreme Court held that "[w]hen a statute speaks of a *party* it refers to a party to the record, a plaintiff or a defendant, and generally those who are not named as such in the record are not properly regarded as parties and may not avail themselves of rights given to parties." 324 P.2d at 860, citing 39 Am.Jur. 851, Parties, sec.4 (emphasis added). In light of the above discussion we construe the term "party," as it is used in 7 GCA § 6107, as a term of art, referring to those by or against whom a lawsuit is brought, i.e., the named litigants to the underlying lawsuit.[6]

[13] The conclusion that the term "party" within the meaning of § 6107 is limited to named parties of record is also supported by the overall scheme of the disqualification statute. While the term "party" is not defined in the statute, § 6107 uses the term no less than five times and

[6] This definition encompasses those who seek and are granted intervention. *See In re Duque v. Super. Ct. (Rios)*, 2007 Guam 15; *United States v. South Florida Water Mgmt. Dist.*, 290 F. Supp. 2d 1356 (S.D. Fla. 2003); *Idaho v. Freeman*, 507 F. Supp. 706 (D. Idaho 1981).

expressly differentiates between parties, the parties' attorneys, and the judge or justice presiding over the action.[7] The express differentiation between parties, their attorneys, and the judge or justice sought to be disqualified in § 6107 exhibits the legislature's intent to treat parties and their attorneys differently, and we cannot say that when the legislature limited requests for disqualification to parties it intended to include a party's attorney within that definition. *See Russello v. United States,* 464 U.S. 16, 23 (1983) (citation omitted) ("[W]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

[14] In light of the analysis presented above, we conclude that attorneys involved in litigation *in their capacity as attorneys* are not parties within the meaning of the disqualification statute, even when the attorneys themselves may be subject to court orders.[8] This is not to say that a non-party attorney who is the subject of a court order is left without a procedural mechanism through which he might challenge an order he believes adversely affects his rights. Assuming a case and controversy exists and the attorney otherwise has standing, the attorney could seek relief through an extraordinary writ.

[15] In this case, Moylan was not a named party below and he did not become a party by filing the motion to vacate the conflict wall because it was filed under the auspices of the *Tennessen* case rather than as an independent action. Likewise, the lower court's order vacating the conflict wall did not act as a standing conferring event because it related to the *Tennessen*

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[7] Title 7 GCA § 6107 provides in relevant part that statements of objection "shall forthwith be served by the presenting party on each party, or his or her attorney, who has appeared in the action or proceeding and on the Justice or Judge alleged in such statement to be disqualified."

[8] This, of course, does not include situations where an attorney is subject to a contempt proceeding, which is a separate proceeding distinct from the underlying action. *Latrobe Steel Co.*, 545 F.2d at 1343.

case rather than to Moylan personally. Finally, Moylan did not become a party by filing a notice of appeal in a case that he was never granted party status in the first place. In sum, since Moylan was not a "party" to the "action or proceeding" within the meaning of the disqualification statute this panel does not see how he should be allowed to avail himself of the procedures set forth in 7 GCA § 6107.

[16] The above conclusion is in line with the California Supreme Court's interpretation of California Code of Civil Procedure § 170 *et seq*, which acted as the model for Guam's own disqualification statute. Title 7 GCA § 6107 was taken from portions of California Code of Civil Procedure § 170.3 and the Guam Supreme Court has stated that "California cases interpreting section 170 are persuasive authority." *People v. Johnny*, 2006 Guam 10 ¶ 13 ("As section 6107 is derived from a California statute, this court will not deviate from California case law absent compelling reason to do so.") (citing *Cruz v. Cruz*, 2005 Guam 3 ¶ 9). Title 7 GCA § 6107 tracks the language of California Code of Civil Procedure § 170.3(c)(1), which states: "If a judge who should disqualify himself or herself refuses or fails to do so, *any party may file* with the clerk a written verified statement objecting to the hearing or trial before the judge and setting forth the facts constituting the grounds for disqualification of the judge." West's Ann.Cal. C.C.P. § 170.3(c)(1) (emphasis added).

[17] Section 170.3(d) provides that only "*parties to the proceeding*" may seek review of a disqualification determination. West's Ann.Cal.C.C.P. § 170.3(d). In *Curle v. Super. Ct.*, 16 P.3d 166 (Cal. 2001), the California Supreme Court interpreted the phrase "parties to the proceeding," holding that a judge may not seek judicial review of a disqualification order where the judge was not a "party" within the meaning of the statute. In that case, the criminal defendant filed a statement of objection seeking to disqualify the judge scheduled to preside over

the defendant's sentencing hearing. 16 P.3d at 169. The defendant's request was granted, and the disqualified judge then filed a petition for review in the court of appeal seeking to overturn the disqualification order. *Id.* at 167. The judge argued that the order of disqualification violated his rights and was procedurally unfair. *Id.* at 175. He further argued that the ruling of disqualification "might provide evidence of misconduct warranting judicial discipline." *Id.* The court of appeal ordered the superior court to vacate the disqualification order and the California Supreme Court granted review. *Id.* at 167.

[18] The issue before the California Supreme Court in *Curle* was whether the disqualified judge was one of the "parties to the proceeding" within the meaning of § 170.3(d). Beginning with the language of the statute the court stated "[i]f there is no ambiguity in the language, we presume the Legislature meant what it said, and the plain meaning of the statue governs." *Id.* at 170. The court also noted that it must consider the statutory language "in the context of the entire statute and the statutory scheme . . . giving significance to every word." *Id.* The court specifically referred to the phrase "any party" contained in § 170.3(c), which is the basis for 7 GCA § 6107, and stated that "the Legislature consistently used the term 'parties' to refer to the litigants in the underlying proceeding." *Id.* at 170, 173. Ultimately, the court held that "the usual, ordinary meaning of the word 'party' as used in the Code of Civil Procedure refers to the litigants in the underlying matter and does not include the individual judge who presides over an action or special proceeding." *Id.* at 172.

[19] The disqualified judge in *Curle* also argued that he became a party to the proceeding within the meaning of the California disqualification statute when he appeared and filed an opposition to the defendant's request for disqualification. *Id.* at 171. The gist of the judge's argument was that since he had 'appeared' in a 'proceeding' and filed papers he must therefore

be a party to such proceeding. The California Supreme Court disagreed, holding that the phrase "parties to the proceeding" – taken as a whole – must be referring to the "*underlying* proceeding" and not to ancillary proceedings unrelated to the substantive issues between the named parties. *Id.* In other words, the court held that the word "proceeding" as it is used in the disqualification statute refers only to those proceedings related to the substantive rights of the named parties.[9]

[20] We find the California Supreme Court's interpretation of the phrase "parties to the proceeding" well reasoned, based on the plain language of the text, and see no reason to deviate from its interpretation in this case.[10] We recognize that a distinction exists between the

[9] This interpretation is also supported by the federal courts' interpretation of 28 U.S.C.A. § 455, which sets forth the grounds under which federal judges must be disqualified. In *United States v. Sciarra*, 851 F.2d 621 (3d Cir. 1988), the Third Circuit held that non-party witnesses lacked standing to file motions for disqualification because they were not parties to the proceeding within the meaning of the statute. The court focused on the word "proceeding," which is defined in the statute to include "pre-trial, trial, appellate review, or other stages of litigation." 28 U.S.C.A § 455(d)(1). The court placed significance on the fact that "[e]ach of the statutory examples of a proceeding implies . . . decisions *affecting the substantive rights of litigants to an actual case or controversy*." *Sciarra*, 851 F.2d at 635 (emphasis added). Given the statute's focus on the rights of the parties, the court construed the term "proceeding" as "embrac[ing] only such activity following the initiation of an action by a private party or governmental agency designed ultimately to modify or affect the substantive rights of a litigant." *Id.* (citing *Davis v. Bd. of Sch. Comm'rs*, 517 F.2d 1044, 1051-52 (5th Cir. 1975) (noting that attorneys may not invoke section 455 without demonstrating judicial bias directed at a party)); *see also, Lindsey v. City of Beaufort*, 911 F. Supp. 962 (D. S.C. 1995).

The Third Circuit's holding in *Sciarra* is important for two reasons. First, we are informed by the more general holding that non-parties lack standing to seek disqualification under the federal disqualification statute. Second, and more importantly for the purposes of interpreting our own statute, we are concerned with the federal court's interpretation of the word "proceeding." Like the federal statute, the Guam disqualification statute defines the term "proceeding." 7 GCA § 6105(d)(1). In fact, the definition of the term proceeding in § 6105(d)(1) is taken directly from the federal statute, and provides that the term "*Proceeding* includes pre-trial, appellate review or other stage of litigation." 7 GCA § 6105(d)(1) (2005). As in the federal statute, each of the statutory examples of a proceeding in the Guam disqualification statute refers to stages of litigation affecting the substantive rights of the litigants. As the court in *Sciarra* held, given the statutory definition, the only reasonable construction of the term "proceeding" is that it encompasses only adversarial proceedings between the parties to the underlying action. We find the federal court's reasoning persuasive and hold that the term "proceeding" as defined in § 6105(d)(1) necessarily embraces only such activity following the initiation of an action by a party designed ultimately to modify or affect the substantive rights of a litigant in an actual case or controversy.

[10] The California Supreme Court in *Curle* also addressed the judge's concerns that the disqualification order might ultimately subject him to ethical disciplinary action. The court stated:

> In any event, although a ruling disqualifying a judge for cause under certain circumstances might provide evidence of misconduct warranting judicial discipline, such discipline could not be imposed without further proceedings before the Commission on Judicial

procedural posture in *Curle* and that of this case. In *Curle*, the non-party judge was seeking appellate review of a disqualification order made at the trial court level. Whereas, in this case, Moylan is not seeking review of an order disqualifying or failing to disqualify a judge; rather, he is seeking disqualification of the justices on appeal from a case to which he was never granted party status. This is a distinction without a difference for the purposes of this case. In both cases neither Moylan nor Curle were parties to the proceedings below. Furthermore, *Curle* is not cited because it is dispositive; rather, *Curle* simply informs our analysis and is cited for the proposition that a non-party does not become a party simply by filing papers in a proceeding.

[21] Like the judge in *Curle*, Moylan was not a party to the proceedings below and therefore cannot now invoke a statute which only grants parties the right to seek disqualification. Although nothing in this opinion should be construed as limiting a Real Party in Interest, as defined in Rule 17 of the Guam Rules of Civil Procedure, from proceeding as such under the auspices of that rule, Moylan cannot make himself a Real Party in Interest to the proceeding on appeal merely by styling himself as such in the caption. *See* Guam R. Civ. P. 17(a); *Cf. S.O.V. v. People ex rel. M.C.*, 914 P.2d 355, 360 (Colo. 1996). Indeed, Moylan admits he was neither a party to the lower court case nor the initial appeals taken therefrom. Moylan seems to contend, however, that at some point between the lower court's issuance of the order vacating the conflict wall and Moylan's filing a notice of appeal (or perhaps as a result of the combination of those two events), he became a "party" within the meaning of § 6107. Verified Reply Statement of

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> Performance, where the judge would have a full and fair opportunity to respond to any allegations of misconduct, as well as an opportunity to petition for review in this court . . . .
>
> Statutes governing disqualification for cause are intended to ensure public confidence in the judiciary and to protect the right of the litigants to a fair and impartial adjudicator – not to safeguard an asserted right, privilege, or preference of a judge to try or hear a particular dispute.

Curle v. Super. Ct. 16 P.3d 166, 175 (Cal. 2001).

Objection. Re: Chief Justice Torres (Mar. 10, 2010). Moylan's argument assumes the occurrence of a procedural event that never took place – that he was granted party status. It also assumes that the order vacating the conflict wall was directed at Moylan personally independent from the *Tennessen* case. It was not. The lower court vacated the conflict wall precisely because the issue was moot as to the *Tennessen* case. The caption of the lower court's order is instructive; it only lists as parties the People of Guam and Tennessen; Moylan is not styled either as a party or a real party in interest.

[22] Notwithstanding these procedural issues, Moylan contends that he could not have intervened before the decision in 2008 Guam 21 was issued because he was never afforded notice of the issues being discussed that allegedly involved his Constitutionally protected rights. *Id.* The gravamen of Moylan's complaint appears to be that the Guam Supreme Court made evidentiary conclusions not in the lower court record, without affording him an evidentiary hearing, and that these findings could ultimately subject him to sanctions. There is no doubt that the Constitution would afford Moylan certain rights in any proceedings against him that may arise from the actions he took as Attorney General related to the *Tennessen* prosecution. If, for example, the jurisdiction should seek to disbar him for violating the Rules of Professional Conduct, or the court should wish to issue a contempt sanction against him for his violation of a court order, Due Process would afford him the right to present evidence in any such proceeding, and the right to seek to exclude evidence, including statements made by the Supreme Court of Guam. Moylan could then exercise established processes for seeking judicial review of any determination arising from such proceedings. However, his contentions are wholly irrelevant to our determination in the instant case of whether Moylan is a party for the purposes of the disqualification statute.

[23] Moylan's motion to vacate the conflict wall order – which Moylan now characterizes as an injunction restraining speech – was procedurally improper and this panel is unwilling to acquiesce to the assertion of statutory standing under § 6107 where none exists. The contention that Moylan was "dragged" into this case and that he became a party to the proceeding when the trial court issued an order allegedly affecting his constitutional rights is without merit. The only parties to the proceeding in which the trial court issued its order were Tennessen (as the named criminal defendant) and the People of Guam (as the prosecution). Moylan conceded as much at oral argument. Furthermore, Moylan did not seek to obtain the status of a party in the suit by filing a motion to intervene, did not institute an independent action, and did not seek relief through an extraordinary writ. As the court stated in *Munson*, 783 S.W. 2d at 915, "[o]ne who is not a party to the record is not a party to the cause, although he or she may be interested, and in deciding who are parties to the record, the courts will not look beyond the record."

[24] In light of the above analysis, this panel is of the opinion that Moylan is not a "party" within the meaning of § 6107. However, we also recognize that the above analysis implies that Moylan's substantive rights were not at issue when the lower court vacated the conflict wall order as moot. The question of whether Moylan's substantive rights were at issue below is a matter more properly before the Guam Supreme Court sitting on the merits of this appeal. Thus, in an abundance of caution, and in the spirit of judicial transparency, this panel will pass on the standing issue and address the merits of Moylan's requests for disqualification.

B. Moylan has not established any of the grounds for disqualification pursuant to 7 GCA § 6105.

[25] Title 7 GCA § 6105 sets forth the substantive grounds under which a judge or justice must be disqualified. Section 6105 is taken from the federal disqualification statute, 28 U.S.C.A.

§ 455, and the Guam Supreme Court has held that the federal courts' interpretation of the federal statute is instructive for the purpose of interpreting 7 GCA § 6105. *Ada v. Gutierrez*, 2000 Guam 22 ¶ 12 n.2 ("Federal cases are useful in the following examination because Guam's rule on judicial disqualification is based upon the federal law."). Title 7 GCA § 6105 provides in relevant part:

> § 6105. Grounds of Disqualification.
>
> (a) Any Judge shall disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned . . . .
>
> (b) A Judge shall also disqualify himself or herself in the following circumstances . . . .
>
> > (1) Where he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
> >
> > (2) Where in private practice he or she served as a lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer or either has been a material witness concerning the matter;
> >
> > . . . .

7 GCA § 6105 (2005).

[26] Moylan argues that all three justices should be disqualified pursuant to § 6105(a) based on their participation in the previous appeal in this case. He further argues that Chief Justice Torres and Associate Justice Carbullido should be disqualified pursuant to § 6105(b)(1) and (2) based on their representation while in private practice of Moylan and Moylan's ex-wife in their divorce proceedings. Finally, Moylan argues that even if Justice Torres's and Carbullido's involvement in his divorce proceedings do not technically fall within the statutory confines of § 6105(b)(1) or (2), that their involvement raises the appearance of partiality under § 6105(a). Each of these claims will be addressed in turn.

1. Statements made in *People v. Tennessen*, 2008 Guam 21 and 2009 Guam 3

[27] On December 11, 2008, the Guam Supreme Court issued an opinion in *People v. Tennessen*. 2008 Guam 21.[11] The appeal was taken from the conviction of Gene Tennessen (the criminal defendant and named party in this case). In its opinion, the court found that the "conflict wall" shielding Moylan from Tennessen's prosecution had broken down and that Moylan had violated the trial court's order by discussing Tennessen's case with the media. *Id.* ¶ 25. Based on this finding the Court held that the trial court improperly denied Tennessen's motion to recuse the entire Attorney General's Office and reversed and remanded the case. *Id.*

[28] On April 1, 2009, the Guam Supreme Court (again consisting of Chief Justice Torres, Associate Justice Carbullido, and Justice Pro Tempore Benson) issued an amended opinion in *People v. Tennessen*. 2009 Guam 3. Moylan takes issue with the following statements made in the amended opinion:

> a) Moylan's discussions with both Littlepage and Fothergill were in direct violation of Judge Unpingco's order that Moylan "shall not discuss the case with anyone, shall not review files concerning the case shall not have access to any files or information concerning [Tennessen's] case, and shall not obtain or share confidential information concerning [Tennessen's] case with anyone."
>
> *People v. Tennessen*, 2009 Guam 3 ¶ 45.
>
> b) "[T]he undisputed facts lead to the conclusion that Moylan violated Judge Unpingco's order."
>
> *Id.* ¶ 47.
>
> c) Moylan's apparent inability to isolate himself from Tennessen's prosecution reflected poorly on the AG's Office as a whole, which may have led to a public perception that "continued prosecution by the [AG's Office], under the particular circumstances here, [was] improper and unjust, so as to undermine the credibility of the criminal process in our courts."
>
> *Id.* ¶ 50 (quoting *People v. Palomo*, 31 P.3d 879, 882 (Colo. 2001)).

[11] The panel consisted of Chief Justice Torres, Associate Justice Carbullido, and Justice Pro Tempore Benson.

[29] Moylan argues that the above statements demonstrate that the justices have pre-judged the case and give rise to a situation where the justices' "impartiality might reasonably be questioned" under 7 GCA § 6105(a). Moylan states: "[a] reasonable person reviewing 2008 Guam 21 and 2009 Guam 3 might conclude that the [Justices] ha[ve] already formed an opinion as to Appellant's conduct and will reject Appellant's appeal without considering the merits. The [Justices'] impartiality might reasonably be questioned." Statement of Objection Re: Chief Justice Torres at 35 (Feb. 22, 2010); Statement of Objection Re: Pro Tempore Justice Benson at 20 (Feb. 22, 2010); Statement of Objection Re: Associate Justice Carbullido at 31 (Feb. 22, 2010). He further argues that the justices now have a vested interest in protecting their decisions in 2008 Guam 21 and 2009 Guam 3.

[30] Moylan cites *People v. Tamboura*, 2007 WL 1810209 (Cal. 2007), an unpublished California case, which relies on *Patterson v. Coughlin*, 905 F.2d 564 (2d Cir. 1990) for the proposition that the justices should be disqualified based on their alleged pre-judgment. We decline to refer to the unpublished opinion, and the Second Circuit case on which it relies is not on point. In *Patterson,* an inmate brought a complaint pursuant to 42 U.S.C.A. § 1983 against the correctional facility in which he was housed. The complaint alleged that the inmate was subjected to disciplinary action based on the allegation that he was involved in an assault in the prison and that the inmate was denied his right to due process when prison officials denied him the opportunity to present witnesses on his behalf before being subjected to disciplinary action. *Id.* at 566. The lower court granted the inmate relief and the prison officials appealed. The Second Circuit affirmed. Speaking of the right of an inmate subject to a disciplinary hearing to an impartial decisionmaker, the court stated that "[o]ur conception of an impartial decisionmaker is one who, *inter alia*, does not prejudge the evidence[.]" *Id.* at 569-70. The case did not involve

a request to disqualify a judge, which under both federal and Guam law is only available in statutorily specified circumstances.

[31] The justices cite numerous federal and state cases for the proposition that "[a] judge's participation in prior legal proceedings involving related parties or issues is not grounds for disqualification." *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 996 P.2d 303, 307 (Idaho 2000); *see also United States v. Jackson*, 627 F.2d 1198, 1207 n.20 (D.C. Cir. 1980) ("A showing of prior judicial exposure to the same parties does not suffice to demonstrate personal bias"); *Liteky v. United States*, 510 U.S. 540, 555 (1990) ("[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.").

[32] Indeed, the Supreme Court of Guam, interpreting the disqualification statute, has already stated that "disqualifying bias must normally stem from extrajudicial sources[.]" *Van Dox v. Super. Ct.*, 2008 Guam 7 at ¶ 35. *See also Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1178-79 (9th Cir. 2005) ("In determining whether disqualification is warranted under § 455(a), we also apply the general rule that questions about a judge's impartiality must stem from 'extrajudicial' factors, that is, from sources other than the judicial proceeding at hand.") (citing *Liteky*, 510 U.S. at 554). Further, the *Clemens* court, in listing some grounds that would be insufficient to require disqualification, included in this non-exhaustive list "prior rulings in the proceeding, or another proceedings, solely because they were adverse." *Clemens*, 428 F.3d at 1178-79.

[33] A judge must disqualify himself or herself in any proceeding in which his or her impartiality might reasonably be questioned. 7 GCA § 6105(a); *In re Focus Media Inc. v. NBC*, 378 F.3d 916, 929 (9th Cir. 2004). The purpose of this requirement is to avoid even the appearance of bias. *Van Dox v. Super. Ct.*, 2008 Guam 7 at ¶ 32; *see also Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 860 (1988). An objective test is employed. *People v.*

Johnny, 2006 Guam 10 at ¶ 20. Under the reasonable person standard, a Guam court inquires whether a reasonable person would have a reasonable basis for questioning the judge's impartiality, not whether the judge is impartial. *Sule v. Guam Bd. of Dental Exam'rs* 2008 Guam 20 at ¶ 14, citing *United States v. Cherry*, 330 F.3d 658, 665 (4th Cir. 2003). Thus, the court asks whether a person with knowledge of all the facts would perceive a significant risk that the judge will resolve the case on a basis other than the merits. *Clemens v. U.S. Dist. Ct.*, 428 F.3d 1175, 1178 (9th Cir. 2005).

[34] In *Bayliss v. Barnhart*, 427 F.3d 1211 (9th Cir. 2005), the Ninth Circuit held that partiality stemming from an earlier ruling in the same proceeding is only grounds for disqualification where the applicant can show that the judge's behavior "was so extreme as to display clear inability to render fair judgment." 427 F.3d at 1214-15 (internal quotation marks omitted). On the other hand, "expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women . . . sometimes display" do not establish bias. *Liteky*, 510 U.S. at 555-56.

[35] After reviewing the relevant cases, we hold that the statements made in 2008 Guam 21 and 2009 Guam 3 are not grounds for disqualification. The statements by the justices in 2008 Guam 21 and 2009 Guam 3 simply do not rise to the level of extreme judicial behavior that displays the deep-seated favoritism for or antagonism against a party that would render fair judgment impossible. In fact, the finding that the conflict wall had not been effective in this case was expressly based on the record before the Court. Even the justices' seeming annoyance with Moylan's behavior when the Court stated that Moylan's actions reflected poorly on the Attorney General's Office is not grounds for disqualification under the Ninth Circuit's ruling in *Bayliss v. Barnhart*, 427 F.3d 1211 (9th Cir. 2005). Thus, the justices should not be disqualified from

participating in the present appeal based on their statements in 2008 Guam 21 or 2009 Guam 3. Since this is the only ground on which Moylan challenges Justice Pro Tempore Benson's participation, the statement of objection as to Justice Benson is hereby dismissed.

2. Chief Justice Torres's and Associate Justice Carbullido's participation in Moylan's Divorce Proceedings

[36] Moylan contends that Chief Justice Torres and Associate Justice Carbullido should be automatically disqualified under 7 GCA § 6105(b)(1) and (2) for their participation in Moylan's divorce proceedings while the justices were in private practice. Moylan further contends that even if the justices do not fall within the statutory language of subsections (b)(1) and (b)(2) that they should nonetheless be disqualified under subsection (a) because their participation in the divorce proceedings would lead a reasonable person to question their impartiality. Since Moylan's objections to Chief Justice Torres and Justice Carbullido revolve around similar factual circumstances and he seeks disqualification based on the same statutory grounds, both challenges will be considered together.

a. Chief Justice Torres's participation in Moylan's divorce proceeding

[37] Prior to his appointment to the bench, Chief Justice Torres was in private practice with the law firm of Robert J. Torres, P.C. Moylan was employed as an associate in Justice Torres's former law firm. While employed at Chief Justice Torres's firm Moylan was undergoing divorce proceedings (domestic case numbers DM0929-96 and DM0429-96) involving his former wife, Doris Leon Guerrero.

[38] Doris Leon Guerrero's first cousin is Gloria Leon Guerrero Bukikosa Tennessen. Gloria Tennessen is the wife of Gene Tennessen (the named defendant in this case). In 2004, criminal proceedings were instituted against Moylan based on the allegation of domestic assault made by

his former wife Doris Leon Guerrero.[12] Gene Tennessen was listed as a witness in the criminal proceedings against Moylan. At the same time, Gene Tennessen was being prosecuted for theft and official misconduct. Based on these circumstances, the trial judge in Tennessen's case issued an order shielding Moylan – the then-acting Attorney General of Guam – from participating in Tennessen's prosecution.

[39] Chief Justice Torres admits that his former law firm was the attorney of record in Moylan's divorce proceedings. Chief Justice Torres states that "Moylan, as an associate of the Firm, personally signed the complaint and amended complaint for dissolution of marriage, as well as the stipulation and order staying the child support and visitation hearing in DM0429-96." Answer to Statement of Objection re Chief Justice Torres at 4 ¶ 5 (Mar. 5, 2010). Chief Justice Torres also states that during the course of Moylan's divorce proceedings he signed notices to take the deposition of two witnesses. *Id.* Chief Justice Torres denies having any recollection of any communications with Moylan or any other attorney of the firm concerning Moylan's divorce proceedings. *Id.* He also denies having any personal knowledge of the facts underlying the conflict wall that is at issue in this appeal and states that he has "no recollection of ever having discussed with Moylan any matters pertaining to his domestic relations with Doris Leon Guerrero." *Id.* at 5 ¶ 10.

b. Associate Justice Carbullido's participation in Moylan's divorce proceeding

[40] Prior to being appointed to the bench, Associate Justice Carbullido was the managing partner of the former Carbullido Bordallo & Brooks LLP law firm. Justice Carbullido's former law firm represented Doris Leon Guerrero in the divorce proceedings between her and Moylan. Justice Carbullido states in his answer to Moylan's objection that Moylan's divorce proceeding

[12] Moylan was ultimately acquitted of all charges at trial.

was handled by Sandra D. Lynch, an associate in Justice Carbullido's former law firm. Justice Carbullido states that "[o]ther than handling the case intake and assigning the case to Attorney Lynch, I do not have any recollection of discussing the domestic case with Ms. Leon Guerrero." Answer of Justice F. Philip Carbullido to Statement of Objection at 3 ¶ 5 (Mar. 5, 2010).

c. Disqualification under 7 GCA § 6105(b)(2)

[41] Subsection (b)(2) of the disqualification statute provides for the automatic disqualification of a judge "[w]here in private practice he or she served as a lawyer in the matter in controversy, or a lawyer with whom he or she previously practiced law served during such association as a lawyer or either has been a material witness concerning the matter." 7 GCA § 6105(b)(2). When seeking disqualification based on any of the grounds set forth in § 6105(b) the party filing the statement of objection must demonstrate actual bias. *Van Dox v. Super. Ct.*, 2008 Guam 7 ¶ 32 (citing *Dizon v. Super. Ct. (People)*, 1998 Guam 3 ¶ 10 n.3).

[42] Title 7 GCA § 6105(b)(2) is facially inapplicable. Neither Chief Justice Torres nor Associate Justice Carbullido served as an attorney or were associated with an attorney who acted as counsel in the "matter in controversy" in the present appeal, which concerns whether Moylan's due process rights were violated when the trial court issued its order without giving Moylan the opportunity to respond.

[43] Although the phrase "matter in controversy" is not defined in either § 6105 or 28 U.S.C.A. § 455, the Eighth Circuit has held that in determining whether two proceedings are the same "matter in controversy" for the purposes of subsection (b)(2), courts should "look to the substance of the issues argued and decided in the two proceedings." *Little Rock Sch. Dist. v. Armstrong*, 359 F.3d 957, 960 (8th Cir. 2004). The Eighth Circuit has also stated that the question revolves around whether the issues in dispute are " 'sufficiently related' so as to

constitute the same matter in controversy." *In re Apex Oil Co.*, 981 F.2d 302, 303-304 (8th Cir. 1992). Furthermore, "[t]he fact that the two suits might have some facts in common is not controlling." *Dixie Carriers, Inc. v. Channel Fueling Serv., Inc.*, 669 F. Supp. 150, 152 (E.D. Texas 1987) (citing *Chitimacha Tribe of La. v. Harry L. Laws Co.*, 690 F.2d 1157 (5th Cir. 1982)).

[44] Using the Eight Circuit's test and looking at the substance of the issues in the two proceedings, it is clear that Moylan's divorce proceedings are not part of the same "matter in controversy" as Moylan's present appeal. Even if, as Moylan argues, the divorce proceedings shared certain facts in common with the events that led to the order erecting a conflict wall to screen Moylan from his criminal prosecution, the issues in dispute are not sufficiently related to constitute the same matter in controversy. Moylan's appeal raises a discrete legal question – whether the trial court's order constituted an unconstitutional prior restraint on Moylan's First Amendment right to the Freedom of Speech. Moylan's divorce proceedings are entirely unrelated to the resolution of whether the trial court violated Moylan's constitutional rights. To borrow the words of the Fourth Circuit, any connection between the justices' representation of Moylan or his ex-wife and the current appeal is simply "too attenuated to be considered the same matter in controversy." *United States v. DeTemple*, 162 F.3d 279, 286 (4th Cir. 1998).

d. Disqualification under 7 GCA § 6105(b)(1)

[45] Title 7 GCA § 6105(b)(1) provides for the automatic disqualification of a judge "[w]here he or she has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding." 7 GCA § 6105(b)(1). The next question is whether either justice has "personal knowledge of disputed evidentiary facts concerning the proceeding" warranting disqualification under 7 GCA § 6105(b)(1).

[46] As to Chief Justice Torres, Moylan states that "[b]ased upon the Chief Justice's involvement in [Moylan's] domestic case as his former attorney . . . the Chief Justice has personal knowledge about facts and circumstances pertaining to Doris Leon Guerrero and [Moylan] that underlie this appeal." Statement of Objection Re: Chief Justice Torres at 3 ¶ 11. This falls far short of a statement showing the Chief Justice Torres has knowledge of any single evidentiary fact under dispute in the instant case.

[47] As to Associate Justice Carbullido, Moylan similarly argues that "[t]he lower court's injunction against [Moylan] arose from domestic information that the Associate Justice's former client, Doris Leon Guerrero, allegedly shared with Defendant Tennessen." Statement of Objection Re: Associate Justice Carbullido at 4 ¶ 15. Again, he fails to explain how any single piece of the domestic information is an evidentiary fact under dispute in the instant case.

[48] Moylan's assertions fail to point out a specific evidentiary fact *disputed in this appeal* of the Superior Court's denial of Moylan's motion to vacate the judgment, of which the Justices have personal knowledge. Put another way, even if Justices' Torres and Carbullido obtained confidential facts during their representation of Moylan and his ex-wife in their divorce proceedings, which the justices deny, Moylan has failed to demonstrate how such facts would be in dispute in the present proceeding, warranting disqualification of the justices pursuant to § 6105(b)(1).

e. Disqualification under 7 GCA § 6105(a)

[49] The final issue is whether the justices' representation of Moylan and his ex-wife in their divorce proceedings creates an appearance of partiality warranting disqualification under § 6105(a). As previously stated, Guam courts apply an objective, reasonable person standard in determining whether there is an appearance of bias meriting disqualification. *See, e.g., People v.*

Johnny, 2006 Guam 10 at ¶ 20. The grounds asserted in a recusal motion "must be scrutinized with care, and judges should not recuse themselves solely because a party claims an appearance of partiality." *In re Aguinda*, 241 F.3d 194, 201 (2d Cir. 2001). The Tenth Circuit has held that neither "[r]umor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters[,] [nor] mere familiarity with the defendant" give rise to disqualification under the federal disqualification statute. *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995). As the justices in this case point out, judges and justices have "as strong a duty to sit when there is no legitimate reason to recuse as [they] do[] to recuse when the law and facts require." *Nichols v. Alley*, 71 F.3d 347, 351 (10th Cir. 1995).

[50] Although Moylan argues that a reasonable person fully informed of all the relevant facts surrounding the challenge to Chief Justice Torres and Justice Carbullido stemming from their former law firm's involvement in Moylan's divorce proceedings might harbor some doubt as to the propriety of having the justices remain on this case, the relevant federal authority suggests otherwise. In *Idaho v. Freeman* the court held that when analyzing whether a judge should be disqualified for the appearance of partiality, "[i]f a case is one which presents only a question of law, as compared to finding facts or applying law to facts, then disqualification is much less appropriate." 507 F. Supp. 706, 728 (D. Idaho 1981) (citing *Notes, Disqualification of Judges and Justices in the Federal Courts*, 86 HARV. L. REV. 736, 758-59 (1973)).

[51] In this case, the sole issue to be determined on appeal is the legal question of whether the trial court's order violated Moylan's constitutional right to due process and infringed upon his first amendment right to free speech. The trial court's factual considerations in deciding to issue the order are not therefore at issue and thus are not before the Court in this appeal. Since there are no disputed facts that require determination it seems unlikely that a "reasonable person"

would question the justices' impartiality in this case based on their involvement as private attorneys in Moylan's earlier divorce proceedings. The reasonable, well-informed, thoughtful observer would be cognizant of the fact that the issue before the Court is whether the trial court's order constituted an unconstitutional prior restraint on Moylan's First Amendment right to the Freedom of Speech, which is a legal question wholly separate and distinct from the justices' prior representation of Moylan and his ex-wife in their divorce proceedings. Accordingly, we find that Justice Torres's and Carbullido's involvement in Moylan's divorce proceedings does not raise the appearance of partiality within the meaning of 7 GCA § 6105(a).

III. CONCLUSION

[52] This case represents a procedural anomaly in which Moylan – as the former Attorney General of Guam – has attempted to bootstrap a claim onto a criminal case prosecuted by his office in an effort to attack an order that allegedly violated his constitutional rights. Adding an extra layer of irregularity, Moylan has now sought the disqualification of all three members of the Supreme Court on appeal. In enacting 7 GCA § 6107 the legislature provided that only a "party to such action or proceeding" may file a statement of objection seeking the disqualification of a judge or justice under the grounds set forth in 7 GCA § 6105. Given the statutory language and this Court's prior rulings concerning the disqualification statute we cannot escape the conclusion that since Moylan was not a party to the action below he should not be able to avail himself of the procedures set forth in § 6107 to seek disqualification of the justices on appeal. However, since this case will be heard by the Court sitting on the merits, and Moylan has alleged that the justices making up the merits panel are biased, in an effort to dispel the notion that Moylan will not receive a fair hearing this panel has decided to reach the merits of Moylan's disqualification request and has found that Moylan has stated no grounds under 7 GCA

§ 6105 warranting disqualification. Accordingly, Moylan's statements of objection are hereby **DISMISSED**.

Original Signed By: **John A. Manglona**
JOHN A. MANGLONA
Justice *Pro Tempore*

ALEXANDRO C. CASTRO
ALEXANDRO C. CASTRO
Justice *Pro Tempore*

Original Signed By: **Miguel S. Demapan**
MIGUEL S. DEMAPAN
Chief Justice *Pro Tempore*